

**REQUEST FOR PROPOSALS  
NO. 09-004**

**PROPOSALS TO FURNISH  
CUSTODIAN SERVICES**

**Issued by  
Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813**

**State of Hawaii  
August 2009**

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## **Notice to Offerors**

The Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") seeks qualified offerors to furnish Custodian Services.

Sealed proposals for this project, No. 09-004, will be received at:

Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

Proposals will be accepted up to 4:00 p.m., Hawaii Standard Time ("HST"), October 2, 2009. Proposals received after this time will not be accepted. The Request for Proposals ("RFP") may be examined at or obtained from the office listed above. The RFP is also available online at [www.spo.hawaii.gov](http://www.spo.hawaii.gov) in Acrobat Reader format and at [www.eutf.hawaii.gov](http://www.eutf.hawaii.gov) in native file formats, Microsoft Word and Acrobat Reader, as applicable.

For further information, call Jim Williams, Procurement Officer, at (808) 587-5434.

**LEGAL AD DATE: August 28, 2009**

# **ADMINISTRATIVE OVERVIEW**

## **I. Background**

The Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"), an agency of the State of Hawaii ("State"), was established by Act 88, 2001 Session Laws of Hawaii. Act 88 is partially codified as Chapter 87A, Hawaii Revised Statutes ("HRS"). Under HRS Chapter 87A, the EUTF is authorized to design, provide, and administer health and other benefit plans for State and County employees, retirees, and their dependents (aka employee-beneficiaries and dependent-beneficiaries). The benefit plans include medical, prescription drug, vision, dental, and life insurance. The EUTF currently provides benefit plans to approximately 170,000 employee-beneficiaries and dependent-beneficiaries, and during FY2008, the EUTF collected \$552 million in employer and employee-beneficiary contributions and paid out \$511 million in premiums for health and other benefit plans (collectively referred to as "banking and premium payments"). The EUTF's plan and fiscal year is July 1 through June 30.

A board of ten trustees ("Board") who are appointed by the Governor administers the EUTF. Five trustees represent the employee-beneficiaries, one of whom represents retirees. These five trustees are selected by the Governor from a list of candidates provided by the exclusive employee representative organizations. The remaining five trustees, also appointed by the Governor, represent the public employers. The Board's responsibilities include, among other things, determining the nature and scope of benefit plans, entering into contracts to provide such plans, administering the trust fund used to provide such plans and to pay for EUTF administrative expenses, and overseeing all EUTF activities. In several of these activities, a benefits plan consultant ("Consultant") assists the Board.

An administrator appointed by the Board ("Administrator") administers the EUTF's day-to-day operations. The Administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, and an information systems analyst. EUTF staff has 26 permanent and 3 temporary employees (including management staff and the Administrator). The EUTF is organized under three branches; Financial Services Branch, Information Systems Branch, and Member Services Branch. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties to answer phones and e-mails from members and to handle all processing for retirees and process all active employee enrollment submissions. The financial management officer oversees the Financial Services Branch and is supported by accountants and account clerks who reconcile employee accounts, collect employer/employee contribution for health benefits, and process all payments. The EUTF information system analyst is supported by one IT specialist and provides internal IT support services, the Health Insurance Portability and Accountability Act security responsibilities, and coordinates additional support services provided by Department of Accounting and General Services / Information and Communication Services Division.

The Government Accounting Standards Board ("GASB") issued two accounting and financial reporting standards, i.e., Statement No. 43 (Financial Reporting for Post

employment Benefits Other Than Pension Plans (“OPEB”)) and Statement No. 45 (Accounting and Financing Reporting by Employers for Post employment Benefits Other Than Pension Plans). In connection with these new standards, some of the participating employers have decided to “pre-fund” the cost of providing health and other post-employment benefits to State and county employees and retirees who participate in the EUTF. In light of the foregoing, the EUTF has set aside a significant amount of funds that it will invest with a long-term horizon.

As of June 30, 2009, the EUTF had approximately \$94 million in investable assets custodied with the State of Hawaii’s Department of Budget and Finance’s selected custodian. It is anticipated that additional assets for investment ranging from approximately \$0 (zero) to \$64 million annually will be received from employers and put aside by the EUTF to offset long-term OPEB liabilities.

The EUTF’s intentions are to initially set up the investment accounts, and then establish the banking and premium payments later during 2010.

Mercer Sentinel is working with the EUTF to select a custodian as the EUTF builds its assets over an extended period.

The EUTF FY 2006-2007 Annual Report is included as Appendix A of this RFP. EUTF Annual Reports are available on-line at [www.hawaii.gov/budget/LegReports/](http://www.hawaii.gov/budget/LegReports/).

The most recent audited financial statements of the EUTF are attached in Appendix B.

## **II. Purpose**

The EUTF is soliciting proposals from qualified firms to provide comprehensive custodian, banking and related services to the EUTF and EUTF Board. A detailed description of these services is set forth in Paragraph VI of the Scope of Work section. When responding to this Request for Proposal (“RFP”), we encourage you to describe the ways in which you believe your organization’s service capability is unique or would add particular value. Please be succinct in your answers and, if certain services cannot be provided, please state where appropriate.

## **III. Authority**

This RFP is issued under the provisions of Chapters 87A and 103D, Hawaii Revised Statutes (see Appendix C), and the implementing Administrative Rules (see Appendix D). All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a proposal by any prospective offeror shall constitute a representation of such knowledge on the part of such prospective offeror.

## **IV. Procurement Officer and Contract Administrator**

This RFP is issued by the EUTF. The individual listed below is the Procurement Officer and Contract Administrator for this procurement.

Mr. Jim Williams, Administrator  
Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, HI 96813  
Phone: (808) 587-5434  
Fax: (808) 586-2320

## V. Procurement Timetable

Listed below are the important actions and corresponding final dates by which the actions must be taken or completed. **Offerors are notified that these dates are estimated by the EUTF and are subject to change at the discretion of the EUTF. The EUTF reserves the right to change any date(s) as deemed necessary and in the best interest of the EUTF.** If the EUTF decides to change a date for any reason, notification will be given via the addendum process described in Paragraph XIII of this section.

<u>Actions</u>	<u>Date</u>
Release of the RFP	August 28, 2009
Letter of Intent	September 8, 2009
Last date for questions	September 8, 2009
EUTF response to questions	September 16, 2009
Deadline to submit proposals	October 2, 2009 4:00 p.m. (HST)
Determination of priority-listed offerors (if any)	October 16, 2009
Presentations by priority-listed offerors (if any)	October 27 & 28, 2009
Best and final offers (if needed)	November 9, 2009
Contractor Selection and Award	December 9, 2009
Contract Start Date	December 15, 2009
Conversion	January 1, 2010

Priority-listed offerors selected in accordance with Paragraph V of the Proposal Evaluation section of this RFP may be required to make a presentation during October 27 & 28, 2009 in Honolulu, Hawaii. The EUTF staff will contact priority-listed offerors to arrange a specific time and location for the presentation, if any.

## VI. Letter of Intent

Persons interested in submitting a proposal in response to this RFP should submit a non-binding letter of intent (see Appendix E, Letter of Intent to the EUTF). Failure to submit a letter of intent does not preclude an offeror from submitting a proposal in response to this RFP. However, answers to written questions, modifications, amendments, addenda, and clarifications to the RFP, and other official communications relating to the RFP will be sent only to persons and entities that have submitted a letter of intent. The deadline to submit a letter of intent is September 8, 2009.



## **VII. Communications with the EUTF; Questions**

Offerors and potential offerors (including agents of offerors or potential offerors) should not contact any member of the EUTF Board or any member of the EUTF staff. An exception to this rule applies to firms who currently do business with EUTF; provided that any contact made by any such firm should be related to that business, and should not relate to this RFP.

If additional information is required regarding this RFP, requests for such information must be submitted in writing (fax and email are acceptable) to the Procurement Officer. The Procurement Officer, listed in Paragraph IV of this section, is the sole point of contact from the date of release of this RFP until the selection of the offeror or offerors to whom a contract will be awarded.

Questions should be submitted by **4:00 p.m. (Hawaii Standard Time), September 8, 2009**. A written response to any questions will be provided by the EUTF via the addendum process described in Paragraph XIII of this section. At the sole discretion of the EUTF, the EUTF may respond to questions submitted after September 8, 2009.

## **VIII. Submission of Proposals**

Offerors must carefully examine this RFP, all amendments via the addendum process (if any), all required contract forms, and other documents, laws and rules, as necessary, before submitting a proposal. The submission of a proposal shall be considered a warranty and representation that the offeror has made a careful examination and understands the work and the requirements of this RFP.

Each qualified offeror may submit only one (1) proposal. Alternate proposals will not be accepted.

The proposal should be labeled "Hawaii Employer-Union Health Benefits Trust Fund Custodian Services RFP 09-004." The original proposal must be single sided, unbound, and clearly marked, "Original". Twenty (20) copies of the proposal must be submitted, each copy marked, "Copy \_\_\_\_ of 20". Copies may be bound and double-sided, and one (1) electronic copy (MS Word or Adobe Acrobat format on a 650MB/74 minute format CD) of the response must be received no later than **4:00 p.m. (Hawaii Standard Time), October 2, 2009**. The sealed package should be addressed to the Procurement Officer listed in Paragraph IV of this section.

The outside cover of the package containing the proposal shall be marked as indicated below:

Hawaii Employer-Union Health Benefits Trust Fund  
Custodian Services Proposal  
RFP 09-004  
(Name of Firm)

**No faxed or e-mailed proposals will be considered or accepted!**

## **IX. Receipt, Opening and Recording of Proposals**

Proposals and modifications will be time-stamped upon receipt and held in a secure place by the Procurement Officer until the established due date.

Proposals may be modified or withdrawn, prior to the deadline for submission of proposals, by the following:

- Modifications - a written notice accompanying the actual modification received by the Procurement Officer; or a written notice accompanying the actual modification by facsimile machine sent to the Procurement Officer, provided that the offeror submits the written notice accompanying the actual modification within two working days of the Procurement Officer's receipt of the facsimile.
- Withdrawal - a written notice received by the Procurement Officer; or a notice by facsimile machine sent to the Procurement Officer.

Proposals will not be opened publicly, but will be opened in the presence of two or more procurement officials. Proposals and modifications will be shown only to personnel having a legitimate interest in them.

After the date established for receipt of proposals, a register of proposals will be prepared which will include the name of each offeror and the number of modifications received, if any. The register of proposals shall be open to public inspection only after a contract has been awarded.

An offeror may withdraw and resubmit a proposal prior to the final submission date. No withdrawals or re-submissions will be allowed after the final submission date.

## **X. Best and Final Offer**

The Evaluation Committee may request best and final offers. The Evaluation Committee will provide guidance and additional instructions at the time best and final offers are requested. The Procurement Officer must receive any best and final offers at the time and date specified in the Procurement Timetable. If best and final offers are not requested by the Evaluation Committee, or if requested, and it is not submitted by an offeror, the offeror's previous submittal will be construed as the offeror's best and final offer. After best and final offers are received, final evaluations will be conducted for an award.

## **XI. Costs for Proposal Preparation**

Expenses for the development and submission of proposals and other responses to the RFP are the sole responsibility of the organization submitting the proposal or other response. Travel and expenses to and from the State of Hawaii are also the sole responsibility of the organization submitting a proposal or otherwise responding to this RFP.

## **XII. Disqualification of Proposals**

The EUTF reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the scope of work. Any proposal offering any other set of terms and conditions, or terms and conditions contradictory to those included in this RFP, may be disqualified without further notice.

An offeror may be disqualified and a proposal rejected for any one or more of the following non-exclusive reasons:

- Proof of collusion among offerors, in which case all proposals and offerors involved in the collusive action will be rejected.
- The offeror's lack of responsibility and cooperation as shown by past work.
- The proposal shows any noncompliance with applicable law.
- The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- The proposal has any provision reserving the right to accept or reject award, or to enter into an agreement pursuant to an award, or provisions contrary to those required in the solicitation.
- The delivery of the proposal after the deadline specified in the timetable.
- The offeror being in arrears on existing contracts with the State or having defaulted on previous contracts.
- The offeror's lack of sufficient experience to perform the work contemplated.
- The offeror's conflicts of interest or lack of independence in judgment.

## **XIII. RFP Amendments and Addendum**

The EUTF may modify any part of the RFP, prior to the date fixed for award of the contract, by issuance of an addendum. The EUTF will respond to questions and inquiries via the addendum process. Addenda will be numbered consecutively.

## **XIV. Cancellation of Request for Proposals/Rejections of Proposals**

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the EUTF or for any other reason permitted by Chapter 103D, Hawaii Revised Statutes, and its implementing Administrative Rules.

## **XV. Uncertainties Beyond the Control of the EUTF**

The EUTF recognizes that circumstances beyond the control of the EUTF may arise that may significantly affect the ability of the contractor to provide the services described in this RFP or as proposed by the contractor. Accordingly, the EUTF reserves the right to modify any contract resulting from this RFP to address such circumstances.

## **XVI. Proposal Bonds; Performance and/or Payment Bonds**

No bid bond is required to be submitted with the proposal, and no performance or payment bond will be required for the contract awarded pursuant to this RFP.

## **XVII. Errors and Omissions/Professional Liability Insurance**

The contractor shall maintain in full force and effect during the term of the contract, errors and omissions and/or professional liability insurance to cover losses or damages that the EUTF, the EUTF trust fund and/or the EUTF trustees or officers may suffer: (a) arising out of the contractor's performance of the contract; (b) arising out of the contractor's provision of custodian, banking or other services for the EUTF; and/or (c) as a result of any acts or omissions of the contractor acting as a custodian or bank to the EUTF. The contractor's insurance shall have limits and other terms and conditions as shall be agreed upon between the EUTF and the contractor. The contractor's insurance shall add the EUTF and its trustees and officers as additional coverage with respect to the services or operations that contractor performs for the EUTF. Any insurance maintained by the EUTF or State of Hawaii shall be in excess of, and not contribute with, the contractor's insurance. The contractor's insurance shall not be canceled, limited in scope, or non-renewed until after 30 days written notice to the EUTF. The contractor or its insurance carrier shall provide the EUTF with certificates of insurance or other evidence that the required insurance coverage is in effect and maintained during the term of the contract. The procuring of the required insurance hereunder shall not limit the contractor's liability to the EUTF nor shall it fulfill the indemnification provisions and requirements of the contract.

## **XVIII. Acceptance of Proposal and Execution of Contract**

Acceptance of a proposal, if any, will be made as provided in the Procurement Timetable. The offeror must have the ability to perform as called for in the RFP and in the contract. The EUTF shall be the sole judge of capability. The successful offeror will be notified by letter that its proposal has been accepted and that the offeror is being awarded the contract.

The EUTF reserves the right to award a contract based upon the offerors' written proposals and responses received and without prior discussion or negotiations.

Appendix G is the contract form that will be used by the EUTF for the custodian, banking and other services required under this RFP and any amendments thereto. In submitting a proposal, the offeror will be deemed to have agreed to each provision set forth in Appendix G unless the offeror specifically identifies the provision to which objection is made and submits alternative language. The EUTF reserves the right to further negotiate the terms and conditions of the contract with the successful offeror; provided, however, that the EUTF shall have no obligation to accept terms and conditions that vary from those set forth in Appendix G. The contract awarded pursuant to this RFP shall consist of the RFP and any amendments thereto, and the specific terms and conditions of the contract negotiated between the EUTF and the successful offeror.

The EUTF shall forward a contract to the successful offeror for execution. The contract shall be signed by the successful offeror and returned within ten days after receipt by the offeror or within such further time as may be allowed by the EUTF.

No contract shall be considered binding upon the EUTF until the contract has been fully and properly executed by all parties thereto.

If the offeror to whom a contract is awarded shall fail or neglect to enter into the contract within ten days after award or within such further time as may be allowed, the Procurement Officer will consider the next highest ranked offeror or may call for new proposals, if it is deemed to be in the best interests of the EUTF.

#### **XIX. Requirements for Doing Business in the State of Hawaii**

Section 3-122-112, Hawaii Administrative Rules ("HAR"), requires that, before award of contract may be made, the successful offeror must provide proof of compliance with the requirements of the following chapters of the Hawaii Revised Statutes ("HRS"):

- 1) Chapter 237, general excise taxes
- 2) Chapter 383, unemployment insurance
- 3) Chapter 386, workers' compensation
- 4) Chapter 392, temporary disability insurance
- 5) Chapter 393, prepaid health care

And one of the following:

- 1) Be registered and incorporated or organized under the laws of the State of Hawaii, or
- 2) Be registered to do business in the State of Hawaii.

Reference Responsibility of Offerors in §3-122-112, HAR. Offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

#### **HRS Chapter 237 tax clearance requirement for award and final payment.**

Pursuant to §103D-328, HRS, the successful offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the purchasing agency. The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev.2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www.state.hi.us/tax/alphalist.html>

DOTAX Forms by Fax/Mail: (808) 587-7572 or 1 (800) 222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the

application. Facsimile numbers are:

DOTAX: (808) 587-1488

IRS: (808) 539-1573

The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the purchasing agency.

Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate an original "Certification of Compliance for Final Payment" (SPO Form 22), attached, will be required for final payment. A copy of the Form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov).

**HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) are requirements for award.**

Pursuant to §103D-310(c), HRS, the successful offeror shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of the issue and must be valid on the date it is received by the purchasing agency.

The application for certificate of compliance (Form LIR #27) can be obtained from the DLIR website:

<http://www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf>

or from:

DLIR Administrative Services Office  
830 Punchbowl Street, Room 309  
Honolulu, HI 96813  
Phone: (808) 586-8888  
Fax: (808) 586-8899

The DLIR will return the form to the offeror who in turn shall submit it to the purchasing agency. The application for the Certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to the purchasing agency.

### **Business registration.**

**Hawaii business.** A business entity referred to as a "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, offeror shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division ("BREG"). A Hawaii business that is a sole proprietorship, however, is not required to

register with the BREG, and therefore not required to submit the certificate. An offeror's status as sole proprietor or other business entity and its business street address indicated on Proposal Letter will be used to confirm that the offeror is a Hawaii business.

**Compliant non-Hawaii business.** A business entity referred to as a "compliant non-Hawaii business" is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, offeror shall submit a CERTIFICATE OF GOOD STANDING.

To obtain a CERTIFICATE OF GOOD STANDING go online to [www.businessregistrations.com](http://www.businessregistrations.com) and follow the instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 am to 4:30 pm-HST). The "Certificate of Good Standing" is valid for six (6) months from date of issue and offerors are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the BREG.

The above certificates should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of the contract, an offeror otherwise responsive and responsible may not receive the award.

Alternately, instead of separately applying for these certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of Chapter 103D-310(c), HRS, shall be accepted for both contracting and final payment purposes. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$15.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE Program are required to submit the paper certificates as instructed in previous paragraphs

# PROPOSAL

## I. Content of Proposal

The offeror shall prepare a written proposal that will fully describe the qualifications and availability of the offeror to provide the services requested and the compensation the offeror proposes in response to this RFP. The proposal shall include, without limitation, the following:

Section I:	Proposal Transmittal Letter
Section II:	Offer Form OF-1
Section III:	Executive Summary
Section IV:	Project Approach
Section V:	Offeror References
Section VI:	Responses to Questions
Section VII:	Fee Proposal
Section VIII:	Certification
Attachment A:	Staff Resumes
Attachment B:	Staff References
Attachment C:	Offeror's References
Attachment D:	Wage Certification
Attachment E:	Sample Reports (i.e., accounting, performance)
Attachment F:	Financial Statement

## II. Proposal Transmittal Letter

The RFP response must include a transmittal letter addressed to the Procurement Officer. The letter, which will be considered an integral part of the Proposal, must contain the following:

### A. Contact Information

The cover letter shall include the offeror's name, address, telephone/fax numbers, and e-mail address.

### B. Terms and Conditions of RFP and Contract

A statement that the offeror fully understands and will comply with all terms and conditions contained in the RFP and the contract form in Appendix G (including the General Conditions). If an offeror does not plan to comply with one or more of the terms or conditions of the RFP or Appendix G, this must be stated and all exceptions listed and fully described. The EUTF reserves the right to decline or classify as "unresponsive" any substantive changes, modifications, or revisions to the provisions of the contract form (including the General Conditions).

The offeror must include written acknowledgement of receipt of any and all amendments or addenda made to this RFP.



### **C. Legal Entity**

A statement indicating that the offeror is an individual, a partnership, a limited liability company or a corporation. If the offeror is a corporation, a partnership, a limited liability company or other legal entity, include a statement indicating the jurisdiction where the offeror is organized.

### **D. Authorized Signature**

The transmittal letter must be signed by an individual or individuals authorized to legally bind the offeror. If the offeror is a corporation, evidence in the form of a certified copy of a corporate resolution or certified copy of articles of incorporation or bylaws shall be submitted showing the individual's authority to bind the corporation. If the offeror is a partnership, the proposal must be signed by all the partners or evidence in the form of a certified copy of the partnership agreement shall be submitted showing the individual's authority to bind the partnership. Similar evidence must be submitted for an individual signing the proposal letter on behalf of any other kind of entity.

### **E. Federal Tax ID No.**

The transmittal letter shall include the offeror's federal tax identification number.

### **F. Hawaii General Excise Tax ID No.**

A Hawaii General Excise Tax (GET) ID must be provided or a representation that a Hawaii General Excise Tax ID will be obtained prior to commencement of the work.

### **G. Current Licenses and Registration**

A statement that the offeror maintains the current licenses necessary to provide the services required. In addition, offeror must provide evidence that the offeror is registered to do business in the State of Hawaii prior to commencement of the work. True and accurate copies of the offeror's license(s) and certificates must be provided.

### **H. Subcontracting of Services**

A statement by the offeror indicating that the work described in the RFP will not be subcontracted, except as described in the proposal, or assigned. The extent to which the work will be subcontracted and the qualifications of any subcontractor will be considered in evaluating the offeror's ability to perform the service referred to in the RFP.

### **I. Non-discrimination**

A statement of affirmative action that the offeror does not discriminate in employment and practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap or disability.

### **J. Deviations**

If the proposal deviates from the specifications or requirements of the RFP, a statement must be included identifying and describing each such deviation. If no deviations are included in offeror's proposal, a statement to that effect must be made.

### **K. Confidential or Proprietary Information**

The offerors' proposals and all information, data, and other material provided by the offeror to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS. The offeror shall designate in writing to the Procurement Officer those portions of its proposal that contain trade secrets or other proprietary data that are to remain confidential subject to section 3-122-58, HAR. The offeror shall state in its written communication to the Procurement Officer, the reasons for designating the material as confidential. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the rest of offeror's proposal in order to facilitate inspection of the non-confidential portion of the proposal.

The entire proposal CANNOT be considered confidential. Offerors should note that they cannot designate their prices as confidential. Following award of the contract, all offerors' proposed prices will not be withheld from disclosure as confidential.

## **III. Offer Form OF-1**

Include a signed Offer Form OF-1 Appendix I with the exact legal name of the offeror as registered with the Department of Commerce and Consumer Affairs, if applicable, offeror's address, and the name, mailing address, and telephone and fax number (s) of the person the EUTF should contact regarding offeror's proposal.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offeror's proposal may be rejected unless accompanied by other material, containing an original signature that shows that the proposal is legally binding on the offeror.

#### IV. Executive Summary

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal in such a way as to provide the Evaluation Committee with a broad understanding of the entire proposal.

#### V. Project Approach

A description of the offeror's approach and methodology used to develop its action plan to accomplish the scope of work as set forth in this RFP and a detailed description of how the offeror will approach the scope of work.

#### VI. Offeror References

Provide three customer references for similar projects as well as a list, if any, of all current contracts with the State of Hawaii and all those completed within the previous five year period.

The three customer references must meet the following criteria:

- Must have a minimum of \$50 million in custodial account
- Must maintain an array of custodial services
- Services provided to the customer must have included the handling of both investment funds and operational funds

The references shall be provided to the EUTF in the form of questionnaires that have been fully completed by the customer providing the reference. The EUTF has included the reference check questionnaire to be used, as RFP Appendix F. **THE OFFEROR MUST USE THIS FORM, OR AN EXACT DUPLICATE THEREOF.**

The offeror will be solely responsible for obtaining the fully completed reference check questionnaires, and for including them within the offeror's sealed proposal. In order to obtain and submit the completed reference check questionnaire, the offeror shall follow the process detailed below exactly:

1. Offeror makes an exact duplicate (paper or Word electronic document) of the State's form, as it appears in RFP Appendix F;
2. Offeror sends the copy of the form to the reference it has chosen, along with a new, standard #10 envelope that is capable of being sealed;
3. Offeror directs the individual providing the reference check feedback to complete the form in its entirety, sign and date it, seal it with in the provided envelope. The individual may prepare a manual document or complete the exact duplicate Word document and print the completed copy for submission. After sealing the envelope, the individual providing the reference, must sign his or her name in ink across the sealed portion of the envelope and return it directly to the offeror. The offeror will give the reference check provider a deadline, such that the offeror will be able to collect all references in time to include them within its written sealed proposal.

4. When the offeror receives the sealed envelopes from the reference check providers, the offeror will not open them. Instead, the offeror will enclose all of the unopened reference check envelopes in an easily identifiable larger envelope, and will include this envelope as a part of the written sealed proposal. Therefore, when the EUTF opens the proposal, the EUTF will find a clearly labeled envelope enclosed, which contains all of the sealed reference check envelopes.
5. The EUTF will base its reference check evaluation on the contents of these envelopes. THE EUTF WILL NOT ACCEPT LATE REFERENCES OR REFERENCES SUBMITTED THROUGH ANY OTHER CHANNEL OF SUBMISSION OR MEDIUM, WHETHER WRITTEN, ELECTRONIC, VERBAL, OR OTHERWISE.

Each completed questionnaire must include:

- offeror's name;
- organization name;
- name, title, and telephone number of the organization contact knowledgeable about the project work;
- date reference form was completed; and
- responses to numbered items in RFP Appendix F.

The list of contracts with the State of Hawaii must include:

- the contract number;
- the contract term; and
- the procuring state agency for each reference.

***Each evaluator will generally consider the results of reference inquiries by the State regarding all references provided (both state and non-state). Current or prior contracts with the State are not a prerequisite and are not required for the maximum evaluation score possible, and the existence of such contracts with the State will not automatically result in the addition or deduction of evaluation points.***

## **VII. Certification**

The proposal shall include a certification that:

The prices and cost data were arrived at independently, without consultation, communication, or agreement with any other offeror or competitor.

Unless otherwise required by law, the prices and cost data that were submitted have not been knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor prior to the award of the contract.

No attempt was made or will be made by each offeror to include any other person or firm to submit or not to submit a price for the purpose of restricting competition.

# PROPOSAL EVALUATION

## I. Introduction

The EUTF seeks to retain the highest quality organization to provide custodian, banking and related services ("custodian services). Throughout the selection process, the EUTF reserves the right, in its sole discretion:

1. To not award the contract to the lowest cost offeror.
2. To not award the contract at all.

## II. Evaluation Process

An Evaluation Committee selected by the Procurement Officer and the EUTF Board will review and evaluate all proposals submitted by the deadline specified in this RFP.

The evaluation process will be conducted in five phases:

- Phase 1 - Evaluation of Mandatory Requirements
- Phase 2 - Establishment of Priority List of Offerors
- Phase 3 - Interviews with Priority-Listed Offerors
- Phase 4 - Final Evaluation of Proposals
- Phase 5 – Award

### A. The Mercer Sentinel® Global Custody Database

To ensure that the EUTF can accurately assess and compare offerors' relative strengths and weaknesses, the EUTF has retained the services of Mercer Investment Consulting's Mercer Sentinel® Group ("Mercer" or "Mercer Sentinel"). Mercer has developed the Mercer Sentinel Global Custody Database (the "Database") which serves as a repository for custodian information, commonly requested as part of procurements related to custodian services. Mercer Sentinel will use the Database as a tool to guide its analysis for presentation to the EUTF Evaluation Committee; Mercer Sentinel's analysis is intended to assist the Evaluation Committee when it reviews the proposals in accordance with the Evaluation Criteria provided below.

The information in the Database is based on each offeror's response to a detailed questionnaire. The Database can be obtained and reviewed using the offeror's Database login credentials at <http://www.mercerusrs.com/custodydb/>. Offerors without login credentials may contact Mercer Sentinel directly to be registered with the Database in order to obtain the Database, as described below. There is no fee for offerors to participate in the Database and an offeror may terminate participation at any time. All offerors have direct access to the Database and are able to update their questionnaire information as needed, until the Proposal Submission Deadline, when capabilities, services or products change. Offerors are required to submit a complete response to the Database, in

addition to providing a proposal that meets the other requirements set forth in this RFP.

Offerors who are not current participants in the Database and have not previously submitted a questionnaire response must submit a request to Jason Zimmerman at Mercer Sentinel via e-mail at [jason.zimmerman@mercer.com](mailto:jason.zimmerman@mercer.com). After contacting Mercer, offerors will be given access to the Database utility and will receive a blank questionnaire. Offerors must complete the questionnaire, submit it to Mercer no later than the Proposal Submission Deadline, and sign a declaration that the information provided is current and accurate (see Appendix I: Offer Form OF-1). It is anticipated that the questionnaire takes approximately 20 hours to complete, depending on staff and resource availability.

Offerors who already participate in the Database and have submitted a response (or update) within the last calendar year are required, no later than the Proposal Submission Deadline, to review their current submission for completeness, provide updates where necessary, and sign a declaration that the information provided is current and accurate (see Appendix I: Offer Form OF-1). Copies of current database submissions are available for review, using your firm's existing login credentials, at <http://www.mercerusrs.com/custodydb>.

## **B. Database Benchmarking Methodology**

To ensure consistent custodian evaluations, Mercer has identified over 300 individual criteria, grouped into the 14 broad categories described in the Evaluation Criteria section below. Mercer's evaluation standards have been developed using accepted global industry standards as a basis.

Mercer will analyze each offeror's proposal based on the Evaluation Criteria below using responses to the Database questionnaire and supplemental information provided by each offeror in its proposal and responses to questions or requests for information as provided for in this RFP. Mercer's Database rates a custodian's capabilities using a consistent scoring methodology, with maximum criteria scores of up to five (5) points for each of the 300 individual criteria. Weights are assigned to each benchmark category in accordance with the importance of the function or service, based on the EUTF's specific investment structure and service requirements. For an overall database rating, the custodian's category score will be multiplied by the weighting to determine an overall weighted score that will help guide Mercer's analysis for presentation to the EUTF Evaluation Committee.

## **C. Lock of Benchmark Criteria**

The information in the Database cannot be updated or modified after the Proposal Submission Deadline for the purposes of this RFP evaluation. Only the information submitted to Mercer at the time of the Proposal Submission Deadline will be used to evaluate offerors.

### III. Evaluation Criteria

The evaluation criteria listed below will be used to evaluate and rank offerors' proposals.

#### A. General Criteria:

Financial Strength & Insurance. Assessment of the financial strength of each offeror's bank holding company or parent based on risk-adjusted capital ratios, short- and long-term credit ratings, credit outlook, and net operating income trends.

Commitment & Direction. . Assessment of each offeror's dedication to the custody business, and each firm's strategy for continuing to enhance and improve custody and custody-related products and services.

Client Service. Assessment of the offeror's client service delivery model to highlight differences in affecting client relationships, including client inquiry management and issue resolution. Assessment of the organizational structure within each offeror's client services teams and their ability to deliver adequate and effective support to EUTF.

Business Continuity & Disaster Recovery. Assessment of each offeror's business continuity planning and disaster recovery procedures for adequate coverage over the areas affecting custody clients, including hot-site data statistics and frequency of systems back up and recovery.

Outsourcing. Assessment of each offeror's policies regarding outsourced relationships, including contractual service level agreements ('SLA') and onsite due diligence reviews where required.

#### B. Core Criteria:

Traditional Asset Administration. Assessment of each offeror's core competencies for safekeeping and asset administration. This includes assessment of the offeror's securities movement & control ("SMAC") system, settlement processes, and income collection. It also includes assessment of the offeror's ability to monitor proxy notifications and vote ballots ('Proxies') and its procedures for tracking and reporting corporate action information in an effective manner ('Corporate Actions').

Non-Domestic Securities. Assessment of each offeror's capabilities for affecting non-domestic cash and securities holdings for clients' international investments. This category assesses the offeror's sub-custody relationships, including electronic linkages and control procedures ('Sub-custody Network'), and the offeror's processes for affecting tax reclaim in various international jurisdictions ('Foreign Tax Withholding'). This category also assesses the offeror's foreign exchange practices, including execution procedures and operational resources, and internal controls supporting these abilities.

Cash Management. Assessment of the range of each offeror's US- dollar denominated short-term investment fund ('STIF') offerings, overdraft policies and procedures, and the flexibility of each offeror's collection and disbursement timetables.

Accounting, Valuations & Reporting. Evaluation of each offeror's accounting capabilities in relation to their accounting platform functionality, including the system's ability to accommodate multi-currency reporting. This category considers an offeror's securities valuation capabilities, including the quality, frequency, and breadth of each offeror's independent pricing sources, internal price verification procedures, and management's involvement in correcting recurring pricing problems.

Technology. Assessment of the adequacy of each offeror's resource and personnel commitment to custody and custody-related systems maintenance, development, and enhancements, including an assessment of each custodian's reliance on external vendors.

On-Line Information Delivery. Evaluation of each offeror's web-based reporting capabilities, including the range of standard and customized reporting available to clients online, the overall "user-friendliness" of applications, and on-line security provisions.

Banking Services. Assessment of each offeror's ability to provide the following general banking services: Demand Deposit Accounts, Zero Balance Accounts, Interest bearing investment vehicles, and Lock Box.

**C. Ancillary Services Criteria:**

Performance Measurement. Assessment of each offeror's systems and personnel resources dedicated to performance measurement and reporting, and evaluation of the level of integration to the core custody and accounting systems. Finally, this category considers the scope of performance reports available on a standard basis to clients as well as custom performance report creation.

Conversion. Assessment of each offeror's ability to bring on new client accounts and assesses the adequacy of each offeror's conversion plan, the conversion experience within the client service team, and staffing models that support the implementation process.

**D. Fees**

**E. Client References**

The EUTF reserves the right to modify the evaluation criteria, or any other part of this RFP, prior to the date fixed for award of the contract.



#### IV. Phase 1 – Evaluation of Mandatory Requirements

The evaluation of the mandatory requirements shall be on a "pass/no pass" basis. The purpose of this phase is to determine whether an offeror's proposal is sufficiently responsive to the RFP to permit a complete evaluation. Each proposal will be reviewed for responsiveness. Failure to meet the mandatory requirements ("no pass") will be grounds for deeming the proposal non-responsive to the RFP and rejection of the proposal. Only those proposals meeting the following mandatory requirements ("pass") of Phase 1 will be considered in Phase 2:

- Offeror must have been in business for a minimum of five (5) years.
- Offeror must provide custodian services to at least one public health and welfare plan with assets greater than \$500 million or at least one retirement system that includes at least one health and welfare plan with assets greater than \$500 million.
- Offeror must be based in the United States. "Based in the United States" means that offeror's principal place of business is in the United States and that offeror is subject to service of process in the United States.
- The Primary Relationship Manager assigned to the EUTF account has a minimum of four years experience providing custodian services to public health and welfare and/or pension plans.
- Submission of Financial Statement.
- Submission of a complete Proposal Transmittal Letter.
- Submission of a proposal that contains references, fee proposal and pro-forma statements.
- Submission of Mandatory Requirements Certification.

#### V. Phase 2 – Establishment of Priority List of Offerors

All offerors who pass Phase 1, Evaluation of Mandatory Requirements, shall be classified as "acceptable." If there are more than three "acceptable" offerors, the Evaluation Committee will evaluate all proposals and establish a priority list of no more than three (3) offerors who received the best preliminary evaluations. The order and points to be applied to each evaluation criteria is as follows:

##### CRITERIA POINTS

##### Phase 2

##### Evaluation Criteria

General Criteria	15 points
Core Criteria	35 points
Ancillary Services Criteria	10 points
Client References	Pass/Fail

<b>Fees (Initial Proposal)*</b>	<b>40 points</b>
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<b>Total</b>	<b>100 points</b>
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## VI. Phase 3 – Interviews with Priority-Listed Offerors

In this phase, the Evaluation Committee and the Procurement Officer assisted by Mercer may, at the discretion of the EUTF, conduct interviews with the priority-listed offerors in Honolulu on October 27 & 28, 2009.

## VII. Phase 4 – Final Evaluation of Proposals

In this phase, the Evaluation Committee will conduct final evaluations of the priority-listed offerors' proposals in accordance with the following criteria:

### Phase 4

#### Evaluation Criteria

General Criteria	10 points
Core Criteria	23 points
Ancillary Services Criteria	7 points
<b>Final Fees (Best &amp; Final Proposal)**</b>	<b>60 points</b>
<b>Total</b>	<b>100 points</b>

**\*Formula for determining allocation of points for total fees (initial proposal):**  
$$\text{allocated points} = (\$ \text{ amount of the lowest fee proposal} \times 40 \text{ points}) \div \$ \text{ amount of the fee proposal being evaluated}$$

**\*\*Formula for determining allocation of points for fee (best & final proposal):**  
$$\text{allocated points} = (\$ \text{ amount of the lowest fee proposal} \times 60 \text{ points}) \div \$ \text{ amount of the fee proposal being evaluated}$$

## VIII. Phase 5 – Award

The EUTF Board and the Procurement Officer will make the final selection.

## **SCOPE OF WORK**

### **I. Introduction**

The purpose of the contract resulting from this RFP is to obtain a qualified and high quality organization to provide comprehensive health and welfare fund custodian services for the EUTF.

The contractor must meet all minimum requirements set forth in this RFP.

The contractor will enter into a contract in substantially the form set forth in Appendix C, which will obligate the contractor to provide all custodian services required by this RFP, proposed by the contractor in its proposal, and/or otherwise agreed to by the contractor.

### **II. Contract Period**

The term of the contract is two (2) years with two (2) possible two-year extensions exercisable at the sole option of the EUTF Board. The term of the contract will commence on or around December 15, 2009. The EUTF Board will have the sole discretion to determine whether or not to exercise each of the two (2) two-year extension options. The EUTF Board will make these determinations in 2011 and 2013, respectively.

The last payment due to the contractor will be issued after the quarterly performance report and other contracted materials, for December 31 of the expiring year, have been received.

The term of the contract may be extended by the EUTF Board, at its sole option, to facilitate the completion of any custodian bank searches in progress at the end of the then existing term. Such extension shall be solely for the purpose of completing the search(es) and shall be at no additional cost to the EUTF.

### **III. Compensation**

The contractor's fees shall be paid monthly in arrears, as fees are incurred. The contractor shall submit to the EUTF a monthly statement for the work covered under the agreed fee schedule.

Any work not covered by the agreed fee schedule shall be submitted for payment upon completion of the work. The contractor shall submit to EUTF a statement upon completion of the work not covered by the agreed fee schedule.

All statements shall include the work performed by the contractor in sufficient detail to justify payment. The EUTF shall process the claim for payment in accordance with the standard operating procedures of the EUTF.

Please note that funds to pay contractor's fees for performance under this contract are not presently available beyond the current and following fiscal year - through June 30, 2011 (see Paragraph IV, Multi-Term Solicitation).

#### **IV. Multi-Term Solicitation**

This solicitation is for a multi-term contract. As of the date of this RFP, funds to pay for contractor's fees have been appropriated and are available for only the current and following fiscal year of the contract (through June 30, 2011), and the contractual obligation of both parties in each fiscal period beyond June 30, 2011 is subject to the appropriation and availability of funds. The multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period beyond June 30, 2011; however, this does not affect the State's rights or the contractor's rights under any termination clause of the contract. The head of the purchasing agency must notify the contractor on a timely basis if funds are not available for the continuation of the contract for each succeeding fiscal period beyond June 30, 2011. Offerors must submit prices for the entire time of performance only. In the event of cancellation, the contractor will be reimbursed unamortized reasonably incurred nonrecurring costs, if applicable.

#### **V. Liaison and Authorization to Proceed**

The EUTF Financial Management Officer will serve as the primary liaison with the contractor during the term of the contract. The Financial Management Officer will chair status meetings, assist in scheduling, and monitor and assess the contractor's performance.

The Primary Relationship Manager will serve as the contractor's primary liaison with the EUTF during the term of the contract.

The EUTF does not encourage, and will not in any way be bound by, work performed on behalf of the EUTF without approval by the EUTF. Any work performed by the contractor prior to approval by the EUTF to proceed is done at the contractor's own risk.

#### **VI. Scope of Services**

The purpose of this RFP is to select a qualified and high quality organization to provide comprehensive custodian services (e.g., accounting, banking, custody, reporting and other custodial services) for the EUTF. The successful offeror is expected to have demonstrated the experience, the financial stability, and the ability to provide custodial services for a wide range of investment products, both domestic and international (for future anticipation), and must demonstrate that its custodial capabilities and internal controls are consistent with industry standards. The successful Offeror must be qualified to provide all goods and services required under this RFP.

The successful offeror will be expected to provide all of the specific goods and services required by the EUTF under this RFP. Assumptions concerning the EUTF's investment structure, transaction volumes, reporting, and service requirements, and other pertinent

information that offerors should use in developing service and fee proposals are provided in detail below.

The contractor shall not bind or purport to bind the EUTF for any contractual commitment in excess of the contract period. Contractor shall comply with all applicable EUTF policies and procedures.

The contractor will provide the following services:

- A. Custody & safekeeping of all assets
- B. Reporting accounting, performance measurement, and banking on a monthly and annual basis
- C. Monthly accounting reports delivery within five (5) days of month end.
- D. Monthly performance reports delivered within five (5) days of month end
- E. Monthly banking reports delivered within five (5) days of month end
- F. Annual accounting reports delivery within thirty (30) days of year end.
- G. Annual performance reports delivered within thirty (30) days of year end
- H. Annual banking reports delivered within thirty (30) days of year end
- I. On-line access to accounting, performance and banking data
- J. Banking services / Checking account, interest bearing account, contribution processing, payment issuance.
- K. Lock Box Services
- L. Staff training on custody services

## **VII. Other Provisions**

- A. Key Personnel. The contractor will not change the Primary Relationship Manager or any member of the client servicing team identified in the contractor's proposal without at least thirty (30) days advance written notice to the EUTF. The EUTF has the right to require a change in the Primary Relationship Manager and such a change shall be at the EUTF's discretion. If the custodian fails to reasonably accommodate a requested change in the Primary Relationship Manager, the EUTF shall have the right to terminate the contract.

## ASSUMPTIONS & SUPPLEMENTAL QUESTIONNAIRE

### I. General Assumptions

The EUTF Board of Trustees has not approved the investment manager composition in its final form; below we represent a hypothetical allocation. Please use the below allocation scenario as a proxy for your firm's fee estimates and calculations.

<b>Investment Manager</b>	<b>Vehicle</b>	<b>Benchmark</b>	<b>Valuation Frequency</b>	<b>Holdings</b>	<b>Market Value</b>
	<b>Seg Acct, CF, MF, or Other</b>	<b>(e.g., MSCI EAFE; RU 1000)</b>	<b>Daily/Monthly</b>	<b># of Securities</b>	<b>\$USD (in million)</b>
Manager A	Pooled	S&P 500	Monthly	1	18.1
Manager B	Pooled	Russell 2000	Monthly	1	13.3
Manager C	Pooled	MSCI EAFE	Monthly	1	6.6
Manager D	Pooled	MSCI EM	Monthly	1	4.4
Manager E	Pooled	Barc. TIPS	Monthly	1	17.7
Manager F	Pooled	Barc. US Agg	Monthly	1	23.2
Manager G	Pooled	Barc. HY	Monthly	1	11.1
Manager H	Pooled	S&P GSCI	Monthly	1	5.5
<b>Total</b>				<b>8</b>	<b>100.0</b>

### Anticipated Annual Transaction Volumes

<b>Transaction Type</b>	<b># of transactions (annual)</b>
US depository transactions	...
Fed book entry system	...
Global (ex-US) transactions (provide country allocation)	...
Pooled account transactions	32
Outbound wires	...
Inbound wires	...
Foreign exchange (executed by trustee)	...
Foreign exchange (executed by third-party)	...
Source contributions (physical)	9,600
Source contributions (ACH)	48
Premium payments (physical)	24,400
Premium payments (ACH)	94,400

The EUTF anticipates that monthly contributions will comprise approximately 800 source contributions from physical checks and 4 source contributions from ACH deposits; and, the EUTF anticipates approximately 23,600 quarterly premium ACH payments and 6,100 quarterly physical check payments. The EUTF issues an additional 150 physical checks per month.

The EUTF will require tracking and reporting of contributions by source (i.e., county and employee contributions) and payments (i.e., employee). Contributions will arrive at a custodian supplied lock box, and distributions will use the affiliated bank's Demand Deposit Account.

## **II. Supplemental Questionnaire**

The questionnaire below is designed to supplement Mercer Sentinel's Database questionnaire and elucidate specific custodial topics in accordance with the Evaluation Criteria described above. Responses to supplemental questions will be used as a tool to help the Evaluation Committee evaluate each offeror's proposal. Responses to supplemental questions must be submitted by the Submission Deadline.

### **A. General Qualifications**

1. Please provide the contact information for the person directly responsible for your firm's submission to the EUTF.

---

Name

Title

Address

Telephone

Fax

Email

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2. Provide a description of the management structure of your Custody unit, including reporting lines and responsibilities.

3. Describe any significant changes in your Custody unit's management team in the past two years.
  
4. Complete the following table regarding each member of the client service team and include a brief biography for each individual. Add rows as necessary.

<b>Name</b>	<b>Role in servicing client</b>	<b>Location</b>	<b>Years experience in industry</b>	<b>Years experience with firm</b>
	Relationship Manager			
	Account Administrator			

5. Complete the following table regarding all clients of the individual who would serve as the day-to-day contact for the EUTF. If you are unable to provide the client name, you may leave this column blank, but please provide information concerning client type, asset size, and services provided. Add rows as necessary.

<b>Client name</b>	<b>Client type</b>	<b>Asset size (\$MM)</b>	<b>Services provided</b>

6. Describe how the team members listed above interacts with each other in servicing clients' needs.



7. Describe ongoing training objectives that are in place to ensure all team members remain current in their field. Are there reference manuals or templates for staff to follow standard practices and checklists for transactions?
8. Describe how your administrative and client service functions are organized.
9. Do you have a separate unit to manage clients similar in size and needs to the EUTF? If yes, describe.
10. Discuss how the EUTF fits with your strategic business objectives.

## B. Investment Manager Servicing

11. Describe how you interact with domestic and non-U.S. investment managers and how and where are investment manager relationships organized.
12. Describe your process for reconciling investment manager positions.
13. Do you conduct surveys of investment managers' satisfaction? If so, please provide a summary of your most recent survey.

## C. International Custody

(Note: The EUTF and Mercer Sentinel are seeking international fee information for anticipatory future needs; the EUTF does not foresee an immediate need for international custody services.)

14. Describe your approach to global custody, including establishing client accounts with your sub-custodians, tax reclaims, and other ancillary services.

15. Describe your selection and monitoring process for your sub-custodial network.
16. Are your communications (e.g., trade notifications and dividends) with your sub-custodians automated?
17. List the banks in your global custodian network. Describe your global settlement and income collection procedures in a non-commingled fund environment.

#### D. Accounting / Reporting

18. Please provide a list, description, and samples of your standard accounting and reporting package.
19. Please comment on your ability to customize accounting statements. Statements must be easily downloadable to excel worksheets.
20. Describe your procedure for reissued reports.
21. Please complete the chart below to indicate how many business days after month, quarter, and year end are the following reports available online? Describe your procedures for ensuring the reports are delivered within the expected timeframes.

<b>AUDITED</b>	<b>MONTHLY</b>	<b>QUARTERLY</b>	<b>YEAR END</b>
	<b>On-line / Physical</b>	<b>On-line / Physical</b>	<b>On-line / Physical</b>
Accounting reports			
Performance measurement reports			
Benefit payment reports			

## E. Valuations

22. What process do you go through to price commingled funds and/or mutual funds?
23. What process do you go through to price publicly traded equity and fixed income securities?
24. How do you control manual pricing overrides?

## F. Settlement

25. Describe your procedures for notifying investment managers of trades and cash balances.
26. Describe your procedures for reconciling values with investment managers. How and when is the reconciliation accomplished? If a client or manager reports a discrepancy, what steps do you take to reconcile the difference?
27. Describe your internal control process for monitoring and reviewing failed trades.
28. Describe the reports available to clients and investment managers to analyze failed trades.

## G. Systems

29. Identify the accounting system the EUTF would be placed on. Is it a multi-currency system? Please describe the basis for this decision and if online access if available and at what cost.

30. Describe the system back-up, recovery, and security procedures currently in use.
31. Does your online system have flexible formatting, query capability, and “what if” analysis capabilities?
32. Describe any hardware or software that would be required by the client. Would the hardware/software be provided to the client? If not, please include the costs to purchase whatever is necessary.
33. What type of training do you provide for your clients for your online systems? Is there a time limit?

#### H. Cash Management

34. Provide a list of money market funds that are available as sweep vehicles to invest the cash balances in the investment accounts. Provide (via soft copy) the objective, minimum purchase, fees, and annual returns for the past 1-3-5 years for each fund.
35. Describe your overdraft policies and fees, if any.

#### I. Banking Questions

36. Explain the working arrangement and reporting structure between your custody and banking services.
37. Describe your demand deposit account service.
38. Describe your lock box services.

39. Describe your reconciliation process for banking accounts.

40. Provide a sample set of banking reports.

## J. Healthcare Premium Payments

41. List and describe the available healthcare premium payment reports for the EUTF.

42. Can these reports be viewed on-line and downloaded to excel worksheets easily?  
Do you provide help with creating customized reports; is there any cost?

43. Describe your procedure for the EUTF updating premium payment files on-line,  
including authorization.

## K. Performance Measurement

44. Will the EUTF have a dedicated team member responsible for delivery of  
performance? How does this individual interact with the relationship team?

45. Describe your procedure for calculating returns on both a time-weighted and dollar-  
weighted basis. Provide an example of your standard methodology for performance  
calculations.

## L. Other Questions

46. Please comment, on those aspects of your organization which you believe  
differentiate your organization from others.

47. Describe your procedures for ensuring that all transactions are authorized properly.
48. Provide as an attachment a detailed conversion schedule assuming a November 1, 2009 implementation, specifying the responsibilities of the EUTF, the prior trustee, and your firm. Discuss any issues or key deadlines that would need to be considered.
49. Provide three references similar in size and structure to the EUTF serviced by the same relationship team.

**Hawaii Employer-Union Health Benefits Trust Fund  
Custodian Services  
RFP No. 09-004**

**MANDATORY REQUIREMENTS CERTIFICATION**

The undersigned Offeror hereby represents and warrants to the Hawaii Employer-Union Health Benefits Trust Fund as follows:

1. Offeror has been in business for a minimum of five years.

Date business commenced: \_\_\_\_\_

2. Offeror provides custodian services to at least one public health and welfare plan or retirement system that includes health and welfare plans with assets greater than \$500 million.

Name(s) of client(s): \_\_\_\_\_

3. The Primary Relationship Manager assigned to the EUTF account has a minimum of four years experience providing custodian services to health and welfare and/or pension plans.

Name of the Primary Relationship Manager: \_\_\_\_\_

Number of years of experience: \_\_\_\_\_

4. The Offeror's principal place of business is in the United States. Offeror is subject to service of process in the United States.

Location of Offeror's principal place of business: \_\_\_\_\_

\_\_\_\_\_

**OFFEROR'S NAME:**

\_\_\_\_\_

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## FEE PROPOSAL

As the term of the contract is expected to be two (2) years with two possible (2) two-year optional extensions (granted only at the discretion of the EUTF), the Fee Proposal should be guaranteed for a period of not less than six (6) years from the effective date of the contract. The services detailed under Paragraph VI of the Scope of Work Section of this RFP should form the basis for the proposed fees and should be referred to for a detailed description of the services required of the successful offeror. Proposed fees must include travel, taxes and all expenses.

You should complete the following fee schedule **and pro forma fee estimate** for the first year based on the assumptions provided in Section 2. Please include any other fees based on the assumptions provided that you foresee. In addition, each responding must attached a separate schedule detailing all custody fees and charges.

Please note the EUTF and Mercer Sentinel are seeking international fee information for anticipatory future needs; the EUTF does not foresee an immediate need for international custody services.

	Volume	Fee rate	Total Estimated fee
<b>Transition/conversion fees</b>			
Per account	1	\$	
Per holding	8	\$	
Other applicable fees	...	\$	
Other applicable fees	...	\$	
<b>Account structure fees</b>			
Per domestic separate equity account	...	\$	
Per domestic separate fixed income account	...	\$	
Per international separate equity account*	...	\$	
Per collective fund/mutual fund account	8	\$	
Per collective fund/mutual fund/line item	...	\$	
Per STIF account (to be managed by trustee)	...	\$	
Per cash account	...	\$	
Other applicable fees	...	\$	
Other applicable fees	...	\$	
<b>Basis point fees based on market value</b>			
Domestic (U.S.) separate account assets	...	bps	
Domestic (international) separate account	...	bps	



			Total Estimated fee
assets*	Volume	Fee rate	
Collective fund/mutual fund/line item assets	\$100.0mm	bps	
<b>Activity/transaction fees</b>			
Per US depository transactions (e.g., DTC)	...	\$	
Per Fed Book Entry transaction	...	\$	
Per international depository transactions (e.g., PTC)*	...	\$	
Per pooled transaction (w/associated wire)	32	\$	
Per dividend/interest payment	...	\$	
Per corporate action (voluntary)	...	\$	
Per proxy notification/processing – domestic	...	\$	
Per outgoing wire transfer	...	\$	
Per incoming wire transfer	...	\$	
Per FX transaction (custodian)	...	\$	
Per FX transaction (third-party)	...	\$	
Other applicable fees	...	\$	
Other applicable fees	...	\$	
<b>Healthcare Premium Payments</b>			
Demand Deposit Account	1	\$	
Lock box	1		
Incoming source contributions (check)	9,600	\$	
Incoming source contributions (ACH)	48	\$	
Outgoing premium payments (check)	24,400	\$	
Outgoing premium payment (ACH)	94,400	\$	
Stop payments	...	\$	
Same day checks	...	\$	
Other applicable fees	...	\$	
Other applicable fees	...	\$	
STIF management asset-based fees (hypothetical)	\$1mm	bps	
STIF management transaction fees	52	\$	
Fee guarantee requirement		2 years	

\* please detail the fee increases if Hawaii EUTF exercises the extension periods.

	Volume	Fee rate	Total Estimated fee
<b>Total Estimated Annual Fees</b>		<b>\$</b>	

*\* Attach separate schedule itemizing country-specific charges*

*\*\* Attach separate schedule itemizing any and all charges not included above.*

## **APPENDICES**

APPENDIX A:	HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND ANNUAL REPORT
APPENDIX B:	EUTF FINANCIAL STATEMENTS
APPENDIX C:	HAWAII REVISED STATUTES CHAPTER 87A
APPENDIX D:	EUTF ADMINISTRATIVE RULES
APPENDIX E:	LETTER OF INTENT
APPENDIX F:	REFERENCE INFORMATION QUESTIONNAIRE
APPENDIX G:	CONTRACT AND GENERAL CONDITIONS
APPENDIX H:	WAGE CERTIFICATION
APPENDIX I:	OFFER FORM OF-1

## **APPENDIX A**

### **Hawaii Employer-Union Health Benefits Trust Fund Annual Report**



**ANNUAL REPORT**

**FISCAL YEAR 2007-08**

**Hawaii Employer-Union Health Benefits Trust Fund  
State of Hawaii**

**December 2008**

This report presents an overview of the activities of the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") for the fiscal year 2007 - 2008. The EUTF is administratively attached to the Department of Budget and Finance. The EUTF's office is located at Suite 1520, City Financial Tower, Honolulu, Hawaii.

## **OVERVIEW**

Chapter 87A of the Hawaii Revised Statutes established a trust fund known as the Hawaii Employer-Union Health Benefits Trust Fund. The EUTF is the state agency that provides eligible state and county employees and retirees and their eligible dependents with health and life insurance benefits. The EUTF replaced the Hawaii Public Employees Health Fund ("PEHF"), effective July 1, 2003.

## **TRUST FUND ORGANIZATION**

### **Board of Trustees**

The EUTF is administered by a board of trustees ("Board"). The Board is responsible for determining the nature and scope of the benefit plans offered, negotiating and entering into contracts with insurance carriers and plan administrators, establishing eligibility criteria and management policies for the EUTF, and overseeing all EUTF activities.

There are ten trustees, five representing the public employers and five representing employee-beneficiaries, including a retiree representative. The current trustees are shown below:

#### **Employer Trustees**

- Barbara Annis
- Darwin Ching
- Marie Laderta
- Lawrence Reifurth
- Stanley Shiraki

#### **Employee-Beneficiary Trustees**

- Carl Daeufer, Retirees
- Guy Fujio, HFFA
- Elizabeth Ho, AFSCME
- George Kahooohanohano, SHOPO
- John Radcliffe, UHPA

Board officers currently are Marie Laderta, Chairperson, Barbara Annis, Vice-Chairperson and Elizabeth Ho, Secretary-Treasurer. The officers serve a one-year term beginning July 1 of each year.

During the period covered by this report, the Board has used both standing and temporary committees to facilitate its administration of the EUTF. The two standing committees are the Administrative Committee and the Benefits Committee. The Administrative Committee considers matters pertaining to the administration and operation of the EUTF, e.g., development of budget, organization of staff, setting of personnel policies, evaluation of EUTF systems, and consideration of use of third party administration services. The Benefits Committee considers matters pertaining to the design and procurement of the EUTF's health and life insurance benefit plans.

### **Administrator and Staff**

The day-to-day administration of the EUTF is managed by an administrator who reports to and is responsible to the Board. The administrator is James Williams who was hired in November 2004. The EUTF administrator and new staff positions are exempt from civil service.

The administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, and an information systems analyst. EUTF staff has a total of 35 employees (including management staff and the Administrator).

The EUTF has three branches: the Financial Services Branch, Information Systems Branch, and Member Services Branch. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties that include answering phones and e-mails from members and handling all processing for retirees and the other employees process all active employee enrollment submissions. The financial management officer is supported by two accountants and three account clerks, who reconcile employee accounts, collect employer/employee contributions for health benefits and process all payments. The EUTF information systems analyst provides internal IT support services, fulfills HIPAA security responsibilities, coordinates additional support services provided by DAGS/ICSD, is the project manager for the new benefits administration system implementation (BAS) project and is supported by one IS specialist.

#### Advisors and Consultants

The Board utilized the services of Aon Consulting as its benefits plan consultant effective June 28, 2007. A request for proposal for benefit plan consulting services was issued in March 2007 and the contract was awarded to Aon Consulting in June 2007 with an effective contract start date of June 28, 2007. Aon Consulting is among the top global human capital and management consulting firms, providing a complete array of consulting, outsourcing and insurance brokerage services. The Honolulu office staffed by 11 consultants and support staff focuses on the delivery of employee benefit programs consistent with Hawaii statutes. Aon's contract is through June 30, 2009 with an option to extend the Contract for two years from July 1, 2009 through June 30, 2011.

The Board also has employed professional consultants and advisors on certain specific issues of importance to the EUTF. Business Solutions Technologies (BST) was retained to assist the EUTF with on-going support of the PeopleSoft health fund information management system (PeopleSoft/HFIMS) and assist as technical subject matter experts for implementing the new BAS. Vitech Systems Group, Inc. was selected to implement a new benefits administration system. This system will replace the PeopleSoft/HFIMS. Gartner, Inc. is providing project oversight and assessment over the implementation of the new benefits administration system. In addition, an advisor seat was purchased from Gartner, Inc which offers a cost-effective way for EUTF to obtain valuable technical research, information and reports to support critical information technology needs. .

#### **ADMINISTRATIVE RULES**

The EUTF operates according to administrative rules originally adopted in February 2003. The administrative rules were formulated to meet the requirements of Chapter 87A, Hawaii Revised Statutes, and the health and other benefit plans established by the EUTF. In addition, they were designed to increase administrative efficiencies and reduce the EUTF's administrative costs. For example, the rules set the effective dates for initial enrollments, changes in enrollment, and cancellations of enrollment in the EUTF's health benefit plans so as to facilitate automated handling of such activities. After a general review by the staff and Board, the administrative rules were revised in December 2007.

## **HEALTH AND LIFE INSURANCE BENEFIT PLANS**

During fiscal year 2007-2008, the EUTF provided health and life insurance benefits through contracts with the following organizations:

- ◆ Hawaii Medical Service Association (HMSA)
- ◆ Health Management Associates (HMA)
- ◆ Kaiser Permanente (Kaiser)
- ◆ National Medical Health Card Systems, Inc (NMHC)
- ◆ Hawaii Dental Service (HDS)
- ◆ Vision Service Plan (VSP)
- ◆ Royal State National Insurance Company, Ltd./ChiroPlan Hawaii, Inc. (ChiroPlan)
- ◆ Royal State National Insurance Company, Ltd. (Royal State)
- ◆ Standard Insurance Company (Standard)

During fiscal year 2007-2008 the EUTF introduced several new medical plan options for both employees and retirees. HMSA and HMA provided Preferred Provider Option (PPO) plans for both employees and retirees. The Kaiser Comprehensive Option HMO plan remained available for both employees and retirees. Two additional HMO medical plans were added for active employees, a Kaiser Basic Option HMO medical plan and an HMSA HMO medical plan. A new plan, the HMSA High Deductible Health Plan, was introduced for active employees. The supplemental plans offered by HMSA and Royal State National remained the same. HDS and VSP provided the regular dental and vision plans respectively for active employees and the regular dental and vision plans for retirees. The supplemental plans for both dental (HDS) and vision (VSP) were dropped due to lack of participation. Standard Life Insurance won the contract for the insurance plan, replacing Aetna, for active employees and retirees. Contracts with these organizations expire on June 30, 2009.

For both active employees and retirees, the health benefit plans provided by the EUTF during the fiscal year were available to domestic partners and full-time students up to the age of 24. No additional premium was required for student coverage under the family option. Active employees also received chiropractic benefits through ChiroPlan Hawaii which was offered in combination with any of the medical plans offered.

All active employees who have medical coverage through private sector or federal government plans were eligible to enroll in either of two Supplemental Medical Plans. The Royal State National Insurance Company, Ltd offered a dual coverage medical reimbursement plan, and HMSA offered a fee-for-service dual coverage plan.



The table below shows active employees' enrollment as of June 30, 2008.

Type of Benefit Plans	Type of Coverage			Grand Total
	Self	Two-Party	Family	
<b>MEDICAL - Self Funded</b>				
PPO				
Health Management Associates	308	94	134	536
Hawaii Medical Service Association	17,081	5,204	9,952	32,237
High Deductible Health Plan (HDHP)				
Hawaii Medical Service Association	71	12	16	99
Supplemental				
Hawaii Medical Service Association	268	160	277	705
Royal State National	111	118	249	478
<b>HMO</b>				
Hawaii Medical Service Association	766	269	377	1,412
<b>MEDICAL - Fully Insured</b>				
Kaiser Comprehensive	4,591	1,457	2,348	8,396
Kaiser Basic	131	40	48	219
Total Enrolled				44,082
Waived				10,600
<b>TOTAL MEDICAL</b>				54,683
<b>PRESCRIPTION DRUGS - Self Funded</b>				
National Medical Health Card				
Prescription Drug Only	52	41	58	151
With PPO Plans	17,389	5,298	10,086	32,773
With Dual Plans	268	160	277	705
<b>TOTAL PRESCRIPTION DRUGS</b>				33,629
<b>DENTAL</b>				
Hawaii Dental Service	21,696	9,054	15,637	46,387
Waived				8,286
<b>TOTAL DENTAL</b>				54,673
<b>VISION</b>				
Vision Services Plan	21,562	8,131	14,319	44,012
Waived				10,684
<b>TOTAL VISION</b>				54,696
<b>LIFE INSURANCE</b>				
Standard Life Insurance				54,636
Waived				197
<b>TOTAL LIFE INSURANCE</b>				54,833

The table below shows retirees' enrollment as of June 30, 2008

Type of Benefit Plans	Type of Coverage			Grand Total
	Self	Two-Party	Family	
<b>MEDICAL - Self Funded</b>				
PPO				
HMA Non-Medicare	1	9	2	12
HMA With Medicare	5	7	0	12
HMSA Non-Medicare	3,066	3,414	1,062	7,542
HMSA With Medicare	13,594	7,826	423	21,843
HMO				
Kaiser Non-Medicare	764	702	225	1,691
Kaiser With Medicare	3,188	1,543	111	4,842
Kaiser Out of State	89	54	1	144
Total Enrolled				36,086
Waived				802
<b>TOTAL MEDICAL</b>				36,888
<b>PRESCRIPTION DRUGS - Self Funded</b>				
National Medical Health Card				
Non-Medicare	3,067	3,423	1,064	7,554
Medicare Part D	13,549	7,772	422	21,743
Waived				104
<b>TOTAL PRESCRIPTION DRUGS</b>				29,401
<b>DENTAL</b>				
Hawaii Dental Service	20,612	13,399	1,715	35,726
Waived				1,161
<b>TOTAL DENTAL</b>				36,887
<b>VISION</b>				
Vision Services Plan	20,551	13,628	1,831	36,010
Waived				879
<b>TOTAL VISION</b>				36,889
<b>LIFE INSURANCE</b>				
Standard Life Insurance				31,994
Waived				76
<b>TOTAL LIFE INSURANCE</b>				32,070

## **OPERATIONS**

During fiscal year 2007, the EUTF implemented several major policy and program changes as follows:

- Changed Prescription Drug carriers from HMSA to NMHC (July 1, 2007)
- Implemented four new Medical plans (two HMO, one PPO and one HDHP plans effective July 1, 2007)
- Implemented the EUTF self-funded health plans
- Selected ViTech's V3 BAS software to replace the PeopleSoft benefits administration system
- Dropped the supplemental (dual) dental and vision plans

These implementations challenged EUTF resources, staff capabilities and communications processes.

### **Ongoing Programs and General Operations**

The EUTF participates with the major State departments and counties which host pre-retirement, orientation and other informational sessions during the year. Over 3,400 interested employees attended these sessions. The EUTF continued the program to provide on-site retirement counseling in conjunction with the Employee Retirement System's periodic group retirement counseling sessions. During these sessions, the employee receives counseling from the EUTF staff on their retirement health and life insurance benefits.

During FY2008, the EUTF Customer Service staff faced significant challenges that resulted from the programs noted above. From July 1, 2007 – June 30, 2008, the EUTF Customer Service line received over 53,433 incoming telephone calls. In addition, the Customer Service staff made 17,275 outgoing calls. To address the volume of calls, a new, more efficient automated call distribution system was implemented in March 2008. The results have been significant. During the first 8 ½ months of the fiscal year, the EUTF was able to answer less than 60% of all incoming calls. Since the implementation, the EUTF Customer service section has been able to answer over 93% of all incoming calls. This has provided the EUTF functionality to route calls more efficiently. The additional types of plans and the implementation of the Medicare Part D Prescription Drugs plan had a significant impact on the types of calls received by the EUTF. The number of outgoing calls increased significantly due to the complexity of the questions and inquiries fielded.

In addition, the same staff processed over 15,600 retiree enrollment-related forms, processed, printed and mailed over 6,800 COBRA election notices, 5350 COBRA initial notices, 3,000 COBRA related notices, 20,000 confirmation notices, 6,000 retiree related notices and other project notices or letters such as the special enrollment and responses to retiree requests.

The Enrollment staff received and imaged 56,437 documents during FY2008. Of the documents received and imaged, the staff processed all but 3,583 documents for a completion rate of 94% by July 2008. Enrollment related documents which affected an employee or retiree's benefit plans or coverage total nearly 73% of all documents submitted. Other documents dealt with change of address, correction or clarification of data submitted, removal of dependents from plans and other miscellaneous categories.

The FY 2009 Open Enrollment for active employees was held from April 14, 2008 to May 14, 2008. The EUTF staff conducted 12 training sessions on the four major islands which were attended by over 350 personnel and financial officers. From April 14 – May 16, 2008, 43 open enrollment informational sessions for employees were held on the four major islands plus Molokai and Lanai. About 2,500 employees attended these sessions. Even with the minor changes from the previous year, the EUTF received and processed nearly 9,700 open enrollment changes from the active employees.

In order to better synchronize with the Medicare Part D open enrollment period held in November/December of each year, the open enrollment for EUTF retirees was not held in the spring of 2008 and will be held in fall 2008 to precede Medicare's open enrollment.

### **FISCAL YEAR 2008**

During FY 2008, the EUTF collected \$551,754,581, in employer and employee contributions for health benefit plans and paid carriers \$511,378,717 in premiums. Medicare Part B reimbursements paid to retirees amounted to \$40,948,023. The above amounts are presented on an accrual basis and do not include retrospective premium amounts of approximately \$2.7 million due to HDS and VSP and incurred but not reported expenses in the amount of approximately \$35.4 for the self-funded plans.

An annual audit of the EUTF, as required by Chapter 87A-25(2), was conducted for the plan year July 1, 2007 through June 30, 2008 by Grant Thornton LLP. This audit report includes Government Accounting Standards Board Statement No. 43 (GASB 43), Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans. The EUTF financial reports as presented in the Audit Report were approved by the EUTF Board of Trustees on December 8, 2008 and are attached to and incorporated in this report.

## **APPENDIX B**

### **EUTF Financial Statements**

**Hawaii Employer-Union Health Benefits Trust Fund**  
**STATEMENT OF NET ASSETS**  
(Unaudited)

	<u>June 30, 2009</u>	<u>June 30, 2008</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash		
General	\$ 36,661,149	\$ 40,770,440
Short-term investments	<u>93,707,586</u>	<u>49,271,063</u>
Petty Cash	150	150
Receivable from State of Hawaii and Counties	39,721,047	13,511,471
Other Receivable from Agencies	3,809	3,809
Receivable from Employee - beneficiaries, Net of Allowance for Bad Debt	-	64,972
Medicare reimbursements receivable from individuals, Net of Allowance for Bad Debt	52,404	16,484
Premium reserves held by insurance companies	-	61,347,441
Self funded reserves	19,400,000	19,400,000
Prepaid expenses	33,940	31,180
Due from State of Hawaii and counties	<u>341,812</u>	<u>196,749</u>
Total Current Assets	189,921,897	184,613,759
<b>NONCURRENT ASSETS</b>		
Capital Assets, Net of Accumulated Depreciation	175,007	242,832
Construction in Progress (Computer System)	<u>3,324,122</u>	<u>3,324,122</u>
Total Noncurrent Assets	<u>3,499,129</u>	<u>3,566,954</u>
Total Assets	<u>\$ 193,421,026</u>	<u>\$ 188,180,713</u>
<b>LIABILITIES AND NET ASSETS</b>		
<b>CURRENT LIABILITIES</b>		
Vouchers and Contracts Payable	\$ 133,115	\$ 176,804
Accrued Salaries and Wages	135,450	111,378
Retainage Payable to Vitech	191,333	62,506
Retrospective premium payable	3,279,664	2,706,555
Payable to Insurance Carriers	12,413,501	12,056,723
Net OPEB Liability	167,151	167,151
Payable to Employee - beneficiaries, Net of Allowance for Bad Debt	14,632	-
Medicare Part B Premium Reimbursement Payable	-	-
Administration Fees Liability for Self-Funded Plans	2,065,803	1,929,743
Benefits Liability for Self-Funded Plans	33,634,877	25,078,462
IBNR Liability for Self-Funded Plans	41,096,000	35,389,000
Out-of-State Medical Payable	-	-
Compensated Absences, current portion	<u>41,985</u>	<u>41,985</u>
Total Current Liabilities	<u>93,173,511</u>	<u>77,720,307</u>
<b>NONCURRENT LIABILITIES</b>		
Compensated Absences	<u>116,257</u>	<u>116,257</u>
Total Liabilities	93,289,768	77,836,564
<b>NET ASSETS</b>		
Retained Earnings		
Invested in Capital Assets	3,499,129	3,566,954
OPEB Accumulation Fund	93,711,038	34,271,063
Unrestricted	<u>2,921,091</u>	<u>72,506,132</u>
Total Net Assets	<u>100,131,258</u>	<u>110,344,149</u>
Total Liabilities and Net Assets	<u>\$ 193,421,026</u>	<u>\$ 188,180,713</u>

Hawaii Employer Union Health Benefits Trust Fund  
COMBINED STATEMENT OF REVENUES AND EXPENSES  
BUDGET & ACTUAL COMPARISON  
12 Months Ended June 30, 2009  
(Unaudited)

	Annual Budget	6/30/2009 12 Month Budget	6/30/2009 12 Month Actual	Variance	6/30/2009 12 Month - Other	Self-Funded Plans 12 Month - Other	Notes
<b>REVENUES</b>							
Premium Revenue for Self-Funded Plans	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 383,935,850	HMSA, NMHC, and HMA Inc. self-funded plans.
Administrative Fee - EUTF	4,967,899	4,967,899	5,240,294	272,395	-	-	\$948,077 & \$900,000 (Hawaii Civ DWS), \$1,200,000 (C&C BWS), \$7,500,000 & \$7,450,000 (Hawaii Civ), & \$704,000 (Kauai Dept. of Water), & \$40,110,047 (C&C Honolulu)
Interest Income	2,128,569	2,128,569	2,128,569	-	-	-	\$7,104 (vacation credits transferred in with new employees), \$82,089 (Kaiser Medicare low income subsidy), \$321,818 (HMSA FY09 interest on FY07 gains), and \$896 (HMSA drug settlement)
OPPEB Employer Contribution	-	-	-	-	58,812,124	-	
Increase in Reserves (Gains)	-	-	-	-	411,906	-	
NMHC Rebate	-	-	-	-	-	5,864,448	NMHC Prescription Drug Rebates
IBNR Benefits Reduction	-	-	-	-	446	-	
Purchasing Card Rebates	-	-	-	-	-	-	
Total operating revenues	7,096,468	7,096,468	7,368,853	272,385	59,224,476	389,800,298	
<b>EXPENSES</b>							
TPA Expenses	-	-	-	-	-	25,710,980	
Benefits Paid for Self-Funded Plans	-	-	-	-	-	428,057,553	
IBNR Benefits for Self-Funded Plans	-	-	-	-	-	5,707,000	IBNR adjustment as of 4/30/09 approved by Board of Trustees on July 15, 2009
Personal Services	1,937,256	1,937,256	1,713,615	223,641	-	-	Overtime Salaries is \$5,300 for this 12-month period. EUTF currently has 7 vacancies.
Office Supplies	14,000	14,000	11,584	2,416	-	-	
Dues & Subscriptions	1,300	1,300	1,055	245	-	-	
Postage	73,000	73,000	69,406	3,594	-	-	
Telephone & Telegraph	24,000	24,000	43,582	(19,582)	-	-	Telephone maintenance of \$9,716; 18th floor data/telephone lines of \$15,823
Printing & Binding	125,000	125,000	107,189	17,811	-	-	EUTF Newsletter & Retiree OE
Advertising	-	-	497	(497)	-	-	
Car Mileage	650	650	392	258	-	-	
Transportation - Intra State	19,800	19,800	9,902	9,898	-	-	
Transportation - Out of State	32,960	32,960	17,127	15,833	-	-	
Office Space	290,000	290,000	311,022	(21,022)	-	-	
Rental of Equipment (Copier)	20,000	20,000	21,093	(1,093)	-	-	
R&M EDP	28,000	28,000	152	27,848	-	-	
Insurance	85,000	85,000	78,696	6,304	-	-	Amortization of Fiduciary Liability, Directors & Officers Coverage and Crime Coverage. In December 2008, renewal of insurance in the amount of \$81,455.68.
Services On A Fee Basis (AG Salary)	88,500	88,500	62,280	26,220	-	-	AG office has not billed EUTF since August 2007. EUTF received bills from ERS to pay for 50% of AG salary for the months of July 2008 to April 2009, May and June 2009.
Consultant Services	1,010,000	1,010,000	480,594	529,406	-	-	\$89,845 (Gartner Group), \$200,000 (ACON Risk Services), \$22,000 (ACON Risk Services - Open Enrollment booklet), \$94,749 (State Office of the Auditor - audit services performed by Grant Thornton) & \$74,000 (Mercer Investment Consulting).
Training and Registration	18,480	18,480	11,155	7,325	-	-	IFEBP Annual Conference and Women's Conference
Computer System - Maintenance	793,953	793,953	408,466	385,487	-	-	\$11,746 for Gartner Advisory Seat, \$175 for Ipswitch software, \$22,168 for Oracle licenses & support, \$6,414 for IBM FileNet maintenance, \$319,756 for BST, \$14,677 for EOH Enterprises telephone system additional ports, \$25,992 for KCSO Consolidated Server maintenance, \$481 for Dell parts, \$1,313 for DRI Symantec antivirus renewal, \$2,908 for KH Electric, \$579 for Century Computers memory upgrades, \$174 for T&N Computer Recycling, & \$2,084 for Dell licenses.
New Benefits System	200,000	200,000	2,708,049	(2,508,049)	-	-	Encumbered \$436,568 for BST contract in FY09.
Other	-	-	-	-	-	-	Vitech System Implementation - This item was encumbered in FY08 in DAGS FAMIS, therefore, EUTF will go over budget in FY09.
Equipment (New Benefits System) (Vitech)	-	-	332,900	(332,900)	-	-	Vitech System Equipment - This item was encumbered in FY08 in DAGS FAMIS, therefore, EUTF will go over budget in FY09.
Depreciation	-	-	-	-	67,825	-	
(Gain)/Loss from Carrier Payments	-	-	-	-	576,079	-	This amount is the resulting shortfall after the collection of employer/employee contributions and the payment to carriers. This amount fluctuates every month.
Bad Debt	-	-	-	-	98,325	-	
Total operating expenses	4,761,899	4,761,899	6,388,756	(1,626,857)	742,229	459,475,533	
EXCESS OF REVENUES OVER EXPENDITURES (LOSS)	\$ 2,334,569	\$ 2,334,569	\$ 980,097	\$ (1,354,472)	\$ 58,482,247	\$ (69,675,235)	

**Hawaii Employer-Union Health Benefits Trust Fund**  
**STATEMENT OF CASH FLOWS**  
**12 Months Ended June 30, 2009**  
**(Unaudited)**

	<b>T-903</b>	<b>T-904</b>	<b>T-905</b>	
	<b>Administrative</b>	<b>Operations</b>	<b>S-T Investments</b>	<b>Total</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>				
<b>Increases:</b>				
Contributions Collected	\$ -	\$ 557,064,149	\$ -	\$ 557,064,149
OPEB Employer Contributions Collected	-	-	58,812,124	58,812,124
Return of Medicare Part B prem. reimb.	-	194,256	-	194,256
Interest income received	168,793	1,190,314	624,399	1,983,506
Transfer from/to Operations Account (T-904/905)	3,250,000	15,000,000	-	18,250,000
Cancelled warrants	2,423	-	-	2,423
FY 2007 gains/final accounting	-	61,744,369	-	61,744,369
Transfer of vacation credits from another agency	7,104	-	-	7,104
NMHC Rebate	-	5,864,448	-	5,864,448
Purchasing (P) Card Rebate	446	-	-	446
Other	892	339	-	1,231
<b>TOTAL INCREASE IN CASH</b>	<b>3,429,658</b>	<b>641,057,875</b>	<b>59,436,523</b>	<b>703,924,056</b>
<b>Decreases:</b>				
Payment to carriers	-	593,350,346	-	593,350,346
Medicare Part B prem. reimb.	-	43,208,843	-	43,208,843
Refund to employees / forfeitures	-	187,990	-	187,990
Employee returned checks	-	-	-	-
Return of retrospective amount to HDS/HMSA	-	2,315,978	-	2,315,978
Personal services - payroll	1,687,589	-	-	1,687,589
Transfer to Administrative Account (T-903)	-	3,250,000	-	3,250,000
Transfer to/from S-T Investment Account (T-904/905)	-	-	15,000,000	15,000,000
Transfer of vacation credits to another agency	-	-	-	-
Payment for administrative expenses	4,596,078	-	-	4,596,078
Other	-	-	-	-
<b>TOTAL DECREASE IN CASH</b>	<b>6,283,667</b>	<b>642,313,157</b>	<b>15,000,000</b>	<b>663,596,824</b>
<b>NET INCREASE (DECREASE) IN CASH</b>	<b>(2,854,009)</b>	<b>(1,255,282)</b>	<b>44,436,523</b>	<b>40,327,232</b>
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR</b>	<b>8,632,501</b>	<b>32,137,939</b>	<b>49,271,063</b>	<b>90,041,503</b>
<b>TO-DATE CASH AND CASH EQUIVALENTS</b>	<b>\$ 5,778,492</b>	<b>\$ 30,882,657</b>	<b>\$ 93,707,586</b>	<b>\$ 130,368,735</b>



## **APPENDIX C**

### **Hawaii Revised Statutes Chapter 87A**

**CHAPTER 87A**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

Part I. General Provisions

Section

87A-1 Definitions

Part II. Board of Trustees

87A-5 Composition of board

87A-6 Term of a trustee; vacancy

87A-7 Chair, vice-chair, and secretary-treasurer

87A-8 Compensation and expenses

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Part III. Board Powers and Duties

87A-15 Administration of the fund

87A-16 Health benefits plan; carriers

87A-17 Group life insurance benefits or group life  
insurance  
program

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party  
administrator

87A-19 Plans for part-time, temporary, and seasonal or  
casual  
employees

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87A-21 Eligibility

87A-22 Benefits plan information and enrollment

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87A-24 Other powers

87A-25 Other duties

87A-26 Rules; policies, standards, and procedures

Part IV. Trust Fund

87A-30 Hawaii employer-union health benefits trust fund;  
establishment

87A-31 Trust fund; purpose

87A-31.5 Employer contributions irrevocable

87A-32 State and county contributions; active employees

87A-33 State and county contributions; retired employees

87A-33.5 State and county contribution; reimbursement for  
retired employees

87A-34 State and county contributions; retired employees with fewer than ten years of service

87A-35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service

87A-36 State and county contributions; employees hired after June 30, 2001, and retired

87A-37 Group life insurance benefits plans for retired employees; contributions

87A-38 State and county contributions not considered wages or salary

87A-39 Reimbursement for state contributions

87A-40 Employee-beneficiary contributions; health benefit plans

87A-41 Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan

### **Case Notes**

This chapter's use of general trust language does not impose upon the trustees all of the common law fiduciary duties; although this chapter does not use "discretion" in requiring the board to decide upon the structure of the health benefits plan, the legislature clearly intended that the board have broad discretion in its design; where trustees expressed concern regarding the impact a change to a three- or four-tier structure would have on the collective bargaining process, and also determined that the two-tiered structure would have a negative impact on the smallest percentage of plan participants, trustees did not abuse their discretion. 115 H. 126, 165 P.3d 1027.

### **PART I. GENERAL PROVISIONS**

**§87A-1 Definitions.** As used in this chapter:

"Board" means the board of trustees of the Hawaii employer-union health benefits trust fund described in section 87A-5.

"Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health

benefits or long-term care benefits under group insurance contracts.

"Contribution" means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

"County" means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

"Dependent-beneficiary" means an employee-beneficiary's:

- (1) Spouse;
- (2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
- (3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.

"Employee" means an employee or officer of the State, county, or legislature,

(1) Including:

- (A) An elective officer;
- (B) A per diem employee;
- (C) An officer or employee under an authorized leave of absence;
- (D) An employee of the Hawaii national guard although paid from federal funds;
- (E) A retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
- (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,

- (2) But excluding:
  - (A) A designated beneficiary of a retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
  - (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
  - (C) A part-time, temporary, and seasonal or casual employee.

"Employee-beneficiary" means:

- (1) An employee;
- (2) The beneficiary of an employee who is killed in the performance of the employee's duty;
- (3) An employee who retired prior to 1961;
- (4) The beneficiary of a retired member of the employees' retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
- (5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or
- (6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry;

provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

"Fund" means the Hawaii employer-union health benefits trust fund established in section 87A-30.

"Health benefits plan" means:

- (1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Long-term care benefits plan" means:

- (1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for,

- arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Part-time, temporary, and seasonal or casual employee" means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

"Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.

"Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours, including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

"State agency" includes the office of Hawaiian affairs.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section 87A-5. [L 2001, c 88, pt of §1; am L 2003, c 152, §1]

## **PART I. GENERAL PROVISIONS**

### **§87A-1 Definitions.** As used in this chapter:

"Board" means the board of trustees of the Hawaii employer-union health benefits trust fund described in section 87A-5.

"Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health benefits or long-term care benefits under group insurance contracts.

"Contribution" means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

"County" means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

"Dependent-beneficiary" means an employee-beneficiary's:

- (1) Spouse;
- (2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
- (3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.

"Employee" means an employee or officer of the State, county, or legislature,

(1) Including:

- (A) An elective officer;
- (B) A per diem employee;
- (C) An officer or employee under an authorized leave of absence;
- (D) An employee of the Hawaii national guard although paid from federal funds;
- (E) A retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
- (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,

(2) But excluding:

- (A) A designated beneficiary of a retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
- (C) A part-time, temporary, and seasonal or casual employee.

"Employee-beneficiary" means:

- (1) An employee;
- (2) The beneficiary of an employee who is killed in the performance of the employee's duty;
- (3) An employee who retired prior to 1961;
- (4) The beneficiary of a retired member of the employees' retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
- (5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or
- (6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry;

provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

"Fund" means the Hawaii employer-union health benefits trust fund established in section 87A-30.

"Health benefits plan" means:

- (1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Long-term care benefits plan" means:

- (1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Part-time, temporary, and seasonal or casual employee" means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

"Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.



"Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours, including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

"State agency" includes the office of Hawaiian affairs.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section 87A-5. [L 2001, c 88, pt of §1; am L 2003, c 152, §1]

## **PART II. BOARD OF TRUSTEES**

**§87A-5 Composition of board.** *[See explanatory note below.]* The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor in accordance with the following procedure:

- (1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries and to be selected as follows:
  - (A) Three trustees shall be appointed from a list of two nominees per trustee selected by each of the three exclusive representative organizations that have the largest number of employee-beneficiaries;
  - (B) One trustee shall be appointed from a list of two nominees selected by mutual agreement of the remaining exclusive employee representative organizations; and
  - (C) One trustee representing retirees shall be appointed from a list of two nominees selected by mutual agreement of all eligible exclusive representatives; and
- (2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms. Notwithstanding any other provision of this section, no exclusive representative of a bargaining unit that sponsors or participates in a voluntary employee beneficiary association shall be eligible to select nominees or to be represented by a trustee on the board.

As used in this section, the term "exclusive representative" shall have the same meaning as in section 89-2. [L 2001, c 88, pt of §1; am L 2005, c 250, §1]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**§87A-6 Term of a trustee; vacancy.** *[See explanatory note below.]* The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term.

A vacancy on the board shall be filled in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for nominating or appointing the successor shall be the same criteria used for nominating or appointing the person's predecessor; provided further that vacancies on the board for each trustee position representing retirees and employee-beneficiaries appointed under section 87A-5(1)(A) and (B) shall be filled by appointment of the governor as follows:

- (1) If a vacancy occurs in one of the trustee positions described in section 87A-5(1)(A), then the vacancy shall be appointed from a list of two nominees submitted by the exclusive employee representative from among the three largest exclusive employee representatives that does not have a trustee among the three trustee positions;
- (2) If a vacancy occurs in a trustee position described in section 87A-5(1)(B), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of the exclusive employee representatives described in section 87A-5(1)(B); and
- (3) If a vacancy occurs in the retiree position described in section 87A-5(1)(C), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of all eligible exclusive employee representatives.

If by the end of a trustee's term the trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed. [L 2001, c 88, pt of §1; am L 2005, c 250, §2]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**[§87A-7] Chair, vice-chair, and secretary-treasurer.** The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer. [L 2001, c 88, pt of §1]

**[§87A-8] Compensation and expenses.** Each trustee shall serve without compensation, but the trustees may be reimbursed from the fund for any reasonable expenses incurred in carrying out the purposes of the fund. [L 2001, c 88, pt of §1]

**[§87A-9] Legal adviser.** The attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund. [L 2001, c 88, pt of §1]

**[§87A-10] Meetings; notice.** Meetings may be scheduled, and notice of meetings shall be provided as follows:

- (1) The chairperson may call a meeting of the board at any time by giving at least six calendar days' written notice of the time and place of the meeting to all trustees; and
- (2) A majority of the trustees may call a meeting of the board by giving at least ten calendar days' written notice of the time and place to all other trustees. [L 2001, c 88, pt of §1]

**[§87A-11] Quorum; board actions; voting.** (a) Six trustees, three of whom represent the public employer and three of whom represent employee-beneficiaries, shall constitute a quorum for the transaction of business.

(b) Trustees representing the public employers shall collectively have one vote. Trustees representing the employee-beneficiaries shall collectively have one vote.

For any vote of the trustees representing the public employers to be valid, three of these trustees must concur

to cast such a vote. In the absence of such concurrence, the trustees representing the public employers shall be deemed to have abstained from voting.

For any vote of the trustees representing the employee-beneficiaries to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the employee-beneficiaries shall be deemed to have abstained from voting.

An abstention shall not be counted as either a vote in favor or against a matter before the board.

(c) Any action taken by the board shall be by the concurrence of at least two votes. In the event of a tie vote on any motion, the motion shall fail. Upon the concurrence of six trustees, the board shall participate in dispute resolution. [L 2001, c 88, pt of §1]

**[§87A-12] Records and minutes.** The board shall keep records and minutes of all meetings of the board. [L 2001, c 88, pt of §1]

### **PART III. BOARD POWERS AND DUTIES**

**[§87A-15] Administration of the fund.** The board shall administer and carry out the purpose of the fund. Health and other benefit plans shall be provided at a cost affordable to both the public employers and the public employees. [L 2001, c 88, pt of §1]

**[§87A-16] Health benefits plan; carriers.** (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits. [L 2001, c 88, pt of §1]

**[§87A-16] Health benefits plan; carriers.** (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits. [L 2001, c 88, pt of §1]

**[§87A-17] Group life insurance benefits or group life insurance program.** The board may provide benefits under a group life insurance benefits program or group life insurance program to employees. [L 2001, c 88, pt of §1]

**§87A-18 Long-term care benefits plan; carrier or third-party administrator.** (a) The board may establish a long-term care benefits plan or plans for employee-beneficiaries; the spouses, parents, grandparents, in-law parents, and in-law grandparents of employee-beneficiaries; and qualified-beneficiaries. The plan or plans shall be at no cost to employers and shall comply with article 10H of chapter 431.

(b) Notwithstanding any other law to the contrary, long-term care benefits shall be available only to:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;
- (2) Employee-beneficiary in-law parents and grandparents; and
- (3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five,

who comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits. [L 2001, c 88, pt of §1; am L 2004, c 216, §14]

**[§87A-19] Plans for part-time, temporary, and seasonal or casual employees.** (a) The board may offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. The board may determine eligibility for part-time, temporary, and seasonal or casual employees by rules exempt from chapter 91 as provided in section 87A-26.

(b) The board shall establish the medical, hospital, or surgical benefits plan or plans, which shall be exempt from the minimum group requirements of article 10A of chapter 431. The medical, hospital, or surgical benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of medical, hospital, or surgical services, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the medical, hospital, or surgical benefits plan or plans. Each part-time, temporary, and seasonal or casual employee enrolled for medical, hospital, or surgical benefits shall pay monthly contributions directly to the board's designated carriers. The monthly contributions may include the carrier's administrative costs. [L 2001, c 88, pt of §1]

**§87A-20 REPEALED.** L 2004, c 216, §45.

**[§87A-21] Eligibility.** (a) The board shall establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified-beneficiary, consistent with the provisions of this chapter.

(b) A retired member of the employees' retirement system; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
- (2) Without regard to the date of the retired member's retirement.

(c) A dependent of a retired member shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
- (2) Without regard to the date of the retired member's retirement. [L 2001, c 88, pt of §1]

**[§87A-22] Benefits plan information and enrollment.** (a) The board shall make information summarizing approved benefits plans available to each employee-beneficiary. The information shall, to the extent reasonably possible, be distributed to each employee-beneficiary at the same time and in the same manner.

(b) The board shall establish conditions and procedures for benefits plan enrollment. [L 2001, c 88, pt of §1]

**§87A-23 Health benefits plan supplemental to medicare.**

The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules,

shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;

- (2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to an amount not less than the medicare part B premium, for each of the following who are enrolled in the medicare part B medical insurance plan: (A) an employee-beneficiary who is a retired employee, (B) an employee-beneficiary's spouse while the employee-beneficiary is living, and (C) an employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary. For purposes of this section, a "retired employee" means retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88. If the amount reimbursed by the fund under this section is less than the actual cost of the medicare part B medical insurance plan due to an increase in the medicare part B medical insurance plan rate, the fund shall reimburse each employee-beneficiary and employee-beneficiary's spouse for the cost increase within thirty days of the rate change. Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. This method of payment may be waived by the fund if another method is determined to be more appropriate;
- (3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
- (4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the

- medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
- (5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund. [L 2001, c 88, pt of §1; am L 2003, c 111, §1; am L 2006, c 39, §1]

**§87A-24 Other powers.** In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from chapter 76 and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;
- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this



chapter. [L 2001, c 88, pt of §1; am L 2004, c 216, §15]

**[§87A-25] Other duties.** The board shall:

- (1) Authorize charges and payments from the fund only upon vouchers countersigned by the chairperson and any other person designated by the board;
- (2) Maintain accurate records and accounts of all financial transactions of the fund that shall be audited annually and summarized in an annual report to the governor and legislature;
- (3) Maintain suitable and adequate records and provide information requested by State and county employers as necessary to carry out the purpose of the fund;
- (4) Procure fiduciary liability insurance and error and omissions coverage for all trustees; and
- (5) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys. [L 2001, c 88, pt of §1]

**[§87A-26] Rules; policies, standards, and procedures.**

(a) The board may adopt rules for the purposes of this chapter. Rules shall be adopted without regard to chapter 91. Rule-making procedures shall be adopted by the board and shall minimally provide for:

- (1) Consultation with employers and affected employee organizations with regard to proposed rules;
- (2) Adoption of rules at open meetings that permit the attendance of any interested persons;
- (3) Approval of rules by the governor; and
- (4) Filing of rules with the lieutenant governor.

(b) The board may also issue policies, standards, and procedures consistent with its rules.

(c) The board may adopt rules, without regard to chapter 91, governing dispute resolution procedures in the event of impasse in decision-making; provided that the rules shall be adopted with the concurrence of six trustees.

#### **PART IV. TRUST FUND**

**§87A-30 Hawaii employer-union health benefits trust fund; establishment.** There is established outside the state treasury, a trust fund to be known as the "Hawaii Employer-Union Health Benefits Trust Fund". The fund shall

consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. It is hereby declared that any and all sums contributed or paid from any source to the fund created by this part, and all assets of the fund including any and all interest and earnings on the same, are and shall be held in trust by the board for the exclusive use and benefit of the employee-beneficiaries and dependent-beneficiaries and shall not be subject to appropriation for any other purpose whatsoever. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes. [L 2001, c 88, pt of §1; am L 2006, c 57, §3]

**§87A-31 Trust fund; purpose.** (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32 and 87A-37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under Title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund's future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each

separate fund shall be subject to all of the provisions of this chapter. [L 2001, c 88, pt of §1; am L 2006, c 57, §4]

### **Note**

Part II of chapter 78 referred to in text is repealed.

**[§87A-31.5] Employer contributions irrevocable.** Notwithstanding any law to the contrary, all of the monthly contributions that the State and counties make to the fund under sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and all other contributions that the State and counties may make to the fund, shall be irrevocable; provided that this shall not preclude the fund from returning contributions or payments made by the State or any county under a mistake of fact within one year after the payment of the contributions or payments. [L 2006, c 57, §2]

**[§87A-32] State and county contributions; active employees.** (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

- (1) The monthly contribution shall be a specified dollar amount;
- (2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
- (3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
- (4) If the State or any of the counties establish cafeteria plans in accordance with Title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contributions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee. [L 2001, c 88, pt of §1]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

**[\$87A-32] State and county contributions; active employees.** (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

- (1) The monthly contribution shall be a specified dollar amount;
- (2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
- (3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
- (4) If the State or any of the counties establish cafeteria plans in accordance with Title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contributions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee. [L 2001, c 88, pt of §1]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

#### **§87A-33 State and county contributions; retired**

**employees.** (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
- (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section 87A-36;
- (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
- (4) An employee-beneficiary who retired before July 1, 1984;
- (5) An employee-beneficiary who:
  - (A) Was hired before July 1, 1996;
  - (B) Retired after June 30, 1984; and
  - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
  - (A) Was hired after June 30, 1996; and
  - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$218 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$671 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$342 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$928 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) Effective July 1, 2004, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$254 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$787 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$412 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$1,089 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefit plan or plans and shall not be required to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(d) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2005. The adjusted base composite monthly contribution for each new plan year (July 1 until June 30) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in

effect at the beginning of the new plan year by the rate in effect at the beginning of the previous plan year.

For the plan year beginning July 1, 2005, the adjusted base monthly contribution shall be computed using the actual contracted premium rate as of July 1, 2004, for medicare and non-medicare, self and family health benefits plans with the highest actual contracted premium rate as of July 1, 2004.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

(e) If the board adopts a rate structure that provides for other than self and family rates for the health benefit plans, the base monthly contribution for the rate structure adopted by the board shall be adjusted to provide the equivalent underwriting cost as the base monthly contribution that is provided for in this section. [L 2001, c 88, pt of §1; am L 2003, c 111, §2; am L 2007, c 26, §1]

**[\$87A-33.5] State and county contribution; reimbursement for retired employees.** Effective July 1, 2007, an employee-beneficiary who retires and relocates outside of the State shall be reimbursed for the premiums paid by the employee-beneficiary for a personal health insurance policy; provided that the board shall determine which employee-beneficiaries and what types of personal health insurance policies shall be eligible for reimbursement and may set other conditions that shall be met for the employee-beneficiary to receive the reimbursements provided under this section.

The reimbursement shall be the lesser of:

- (1) The actual cost of the personal health insurance policy; or
- (2) The amount of the state or county contribution for the most comparable health benefits plan.

Reimbursements shall be paid by the fund on a quarterly basis upon the presentation of documentation that the premiums for the personal health insurance policy have been paid by the employee-beneficiary. This section shall apply to all employee-beneficiaries who retire and relocate outside of the State, regardless of their date of retirement. [L 2006, c 167, §1]

**[\$87A-34] State and county contributions; retired employees with fewer than ten years of service.** (a) This section shall apply to state and county contributions to the fund for employees specified in paragraph (1)(E) of the definition of "employee" in section 87A-1 who:

- (1) Were hired on or before June 30, 1996; and
- (2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1]

**§87A-35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service.** (a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-33:

- (1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired prior to July 1, 1996, who has at least ten years of credited service prior to a break in service.

For the purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, upon retirement, the



employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees enrolled in medicare or non-medicare health benefit plans with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b); and
- (2) For retired employees enrolled in medicare or non-medicare health benefit plans with at least fifteen but fewer than twenty-five years of service, a monthly contribution of seventy-five per cent of the base monthly contribution set forth under section 87A-33(b).

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1; am L 2004, c 184, §1]

#### **Note**

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

**§87A-36 State and county contributions; employees hired after June 30, 2001, and retired.** (a) This section shall apply to state and county contributions to the fund for employees hired after June 30, 2001, and who retired, except that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-35:

- (1) An employee hired after June 30, 1996, and prior to July 1, 2001, who transfers employment after June 30, 2001, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired after June 30, 1996, and prior to July 1, 2001, who has at least ten years of credited service prior to a break in service.

For purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after July 1, 2001, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to one-hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b); and
- (4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph (1)(E) of the definition of "employee" in section 87A-1.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate.  
[L 2001, c 88, pt of §1; am L 2004, c 184, §2]

#### **Note**

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

**[§87A-37] Group life insurance benefits plans for retired employees; contributions.** (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a base monthly contribution as set forth in subsection (b) for each retired employee enrolled in the fund's group life insurance benefits plan under section 87A-34, 87A-35, and 87A-36.

(b) Effective July 1, 2003, there is established a base monthly contribution of \$4.16 for each retired employee enrolled in a group life insurance plan; provided that the monthly contribution shall not exceed the actual cost of the group life insurance benefits plan. The base composite monthly contribution shall be adjusted annually beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years. The percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress. [L 2001, c 88, pt of §1]

**[§87A-38] State and county contributions not considered wages or salary.** Contributions made by the State or the counties under this part shall not be considered wages or salary of an employee-beneficiary. No employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund. [L 2001, c 88, pt of §1]

**[§87A-39] Reimbursement for state contributions.** (a) All state agencies having control of funds other than the general fund shall reimburse the State for contributions

made by the State pursuant to sections 87A-32, 87A-33, 87A-34 87A-35, 87A-36, and 87A-37 on account of agency employees whose compensation is paid in whole or part from funds other than the general fund.

(b) All state and county agencies receiving federal funds, which may be expended for the purpose of replacing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds. [L 2001, c 88, pt of \$1]

**[§87A-40] Employee-beneficiary contributions; health benefit plans.**

(a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under Title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution:

- (1) In the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller or employees' retirement system, directly to the fund by the first day of each month; or
- (2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month.

(c) Notwithstanding subsection (a), an employee-beneficiary's monthly contribution to the fund shall include the amount that would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan. [L 2001, c 88, pt of §1]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

**[\$87A-41] Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan.** (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator as specified by the board.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator as specified by the board. [L 2001, c 88, pt of §1]

## **APPENDIX D**

### **EUTF Administrative Rules**

# **HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

## **ADMINISTRATIVE RULES**

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## **1.00 GENERAL PROVISIONS**

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### **1.01 Purpose**

Chapter 87A of the Hawaii Revised Statutes establishes a health trust fund known as the Hawaii Employer-Union Health Benefits Trust Fund. The Fund is to be used to provide eligible state and county employees, retirees, and their dependents with health and other benefit plans at a cost affordable to both the public employers and the public employees. The board is to administer and carry out the purposes of the Fund. These rules are adopted by the board pursuant to Section 87A-26 of the Hawaii Revised Statutes to implement the administration and purposes of the Fund.

### **1.02 Definitions**

As used in these rules, unless otherwise indicated by the context, the following terms shall have the following meanings:

“Administrator” means the administrator of the Fund appointed by the board or the duly authorized representative of the administrator.

“Benefit plan” means a health benefit plan, a group life insurance plan that is subject to Section 79 of the Internal Revenue Code, or any other type of benefit plan except for a long-term care benefit plan.

“Board” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Carrier” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Child” means an employee’s, or where applicable, a domestic partner’s legally adopted child, a child placed for adoption, stepchild, foster child, or recognized natural child. Except for a recognized natural child of an employee or as otherwise provided by these rules, a child must live with the employee-beneficiary. A child has been placed for adoption when an adoptive parent has assumed custody of and the obligation to support a child in anticipation of adopting the child. A foster child is a child: (1) who lives with an employee in a regular parent-child relationship; and (2) for whom the employee has become the child’s guardian or has been awarded legal and physical custody of the child pursuant to a valid court order.

“Contributions” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“County” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Dependent-beneficiary” shall mean the persons described in Rule 3.01 of these rules as being eligible for coverage as dependent-beneficiaries in the health benefit plans offered or sponsored by the Fund.

“Dissolution of domestic partnership” shall occur when: (1) the employee-beneficiary no longer meets the requirements to qualify as a “domestic partner”; (2) one of the partners to the domestic partnership expressly informs the other of the end of their domestic partnership; (3) one of the partners to the domestic partnership takes actions inconsistent with the continued existence of the domestic partnership; or (4) the domestic partnership is otherwise terminated or dissolved.

“Domestic partner” shall mean a person in a spouse-like relationship with an employee-beneficiary who meets the following requirements: (1) the employee-beneficiary and the domestic partner intend to remain in a domestic partnership with each other indefinitely; (2) the employee-

beneficiary and the domestic partner have a common residence and intend to reside together indefinitely; (3) the employee-beneficiary and the domestic partner are and agree to be jointly and severally responsible for each other's basic living expenses incurred in the domestic partnership such as food, shelter and medical care; (4) neither the employee-beneficiary nor the domestic partner are married or a member of another domestic partnership; (5) the employee-beneficiary and the domestic partner are not related by blood in a way that would prevent them from being married to each other in the State of Hawaii; (6) the employee-beneficiary and the domestic partner are both at least 18 years of age and mentally competent to contract; (7) the consent of the employee-beneficiary or the domestic partner to the domestic partnership has not been obtained by force, duress or fraud; and (8) the employee-beneficiary and the domestic partner sign and file with the Fund a declaration of domestic partnership in such form as the board shall from time to time prescribe.

"Employee" shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

"Employee-beneficiary" shall mean the persons described in Rule 3.01 of these rules as being eligible to enroll as employee-beneficiaries in the health benefit plans offered or sponsored by the Fund.

"Employer" or "public employer" shall have the meaning as set forth in Section 89-2 of the Hawaii Revised Statutes.

"Full-time student" means a student who is enrolled in an accredited school, college, or university for not less than the minimum number of credit hours required by such educational institution to have full-time student status.

"Fund" shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

"Fund benefit plan" means a benefit plan offered or sponsored by the Fund.

"Health benefit plan" shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Long-term care benefit plan” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Non-Fund benefit plan” means a benefit plan offered or sponsored by a private employer or an entity other than the Fund.

“Part-time, temporary, and seasonal or casual employee” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Periodic change” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Qualified beneficiary” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Qualified medical child support order” means any judgment, decree, or order issued by a court of competent jurisdiction that requires the provision of health benefits coverage to a child of a non-custodial parent.

“Retired member” or “retired employee” means a former employee, officer, appointed or elected official of the State or counties who is currently receiving a retirement or pension allowance from a State or county retirement system or an employee who retired prior to 1961.

“State or county retirement system” means the employees’ retirement system, the county pension system, or the police, fire, or bandsmen pension system of the State or any county.

“Trustee” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Trustee group” means the group composed of the five trustees representing public employers or the group composed of the five trustees representing employee-beneficiaries as described in Section 87A-5 of the Hawaii Revised Statutes.

### **1.03 Public Information**

To the extent permitted by applicable federal or state law, the public records of the Fund shall be available for inspection at the Fund's office during regular business hours. All requests for inspection of public records shall be in writing and addressed to the administrator or any other person designated by the board to receive such requests. Copies of public records shall be provided upon the payment of the reasonable costs of reproduction and any fees for searching, reviewing and segregating such records. The board shall establish such costs and fees in accordance with applicable federal and state law.

Protected health information about employee-beneficiaries and dependent-beneficiaries are not public records. Employee-beneficiaries, dependent-beneficiaries, and others may have access to such information only in conformance with the Health Insurance Portability and Accountability Act of 1996 and the rules passed under that Act ("HIPAA"), and the Fund's HIPAA Privacy Policies and Procedures.

### **1.04 Computation of Time**

Whenever a period of time is stated in these rules as a number of days from or after an event: (a) the period shall be computed in calendar days; (b) the day of the event shall not be included in the calculation; and (c) the last day of the period shall be included in the calculation.

### **1.05 Officers of the Board**

- (a) The board shall elect a chairperson, vice-chairperson, and secretary-treasurer.
- (b) Both the chairperson and vice-chairperson shall be elected from the same trustee group. The secretary-treasurer shall be elected from the other trustee group.
- (c) Officer terms shall be for one year beginning July 1, 2002, and shall rotate between the trustee groups annually. The terms of all elected officers shall terminate on June 30 of each succeeding year and such officers shall vacate their offices at that time.

- (d) Except as otherwise provided by law or by rules or policies adopted by the board, the duties of the officers shall be as provided in the 10th Edition of *Robert's Rules of Order, Newly Revised*.
- (e) The chairperson or vice-chairperson and secretary-treasurer shall coordinate assignments to the administrator and other Fund staff, requests for information, and other matters concerning the administration and operation of the board.

#### **1.06 Committees of the Board**

- (a) Standing committees shall be established by the board to address critical issues in the major functional areas of the Fund:
  - (1) The Administrative Committee will have combined administrative and finance committee functions;
  - (2) The Benefits Committee will have benefits, communication, and appeals committee functions.
- (b) The board may establish other committees to address matters related to the operation or administration of the Fund or to investigate issues that impact the Fund.
- (c) Committees shall operate informally and shall make recommendations to the full board. Meetings of all standing committees will comply with Part I of Chapter 92 of the Hawaii Revised Statutes.
- (d) A minimum of four trustees (two trustees from each trustee group) shall be assigned to a committee. The assigned number of trustees may be larger for certain committees provided that an equal number of trustees are assigned from each trustee group.
- (e) Attendance of at least one trustee from each trustee group shall be necessary to convene a committee meeting.
- (f) Committees may select a chairperson and any other officers as deemed necessary by the board.
- (g) Committee chairpersons shall coordinate assignments to the administrator and other Fund staff for their respective committees.

- (h) Trustees in attendance shall agree within their working committees on recommendations made to the full board. When there is no agreement by the trustees in attendance, the committee shall present a summary of the disagreement(s) to the full board.

#### **1.07 Meetings of the Board**

- (a) To the extent permitted by applicable federal or state law, the meetings of the board shall be open to the public. Without limiting the foregoing, board meetings shall comply with Part I of Chapter 92 of the Hawaii Revised Statutes, including the provisions therein requiring: (1) written and electronic notice of board meetings at least six calendar days prior to each meeting; and (2) written minutes.
- (b) The board shall designate the administrator or some other member of the Fund's staff to be responsible for preparing agendas for future board meetings. Any trustee may place a question or subject on the agenda of a future board meeting by notifying the administrator or other designated staff person by 12:00 noon, seven days prior to the board meeting. All board meeting agendas shall be transmitted to the chairperson for review prior to public notice.
- (c) Unless otherwise required by the board or applicable law, the parliamentary procedure to be used by the board in the conduct of its meetings shall be in accordance with the 10th Edition of *Roberts Rules of Order, Newly Revised*.
- (d) Voting procedures for board meetings and the criteria for a quorum are established in Section 87A-11 of the Hawaii Revised Statutes. In addition, the following voting procedures shall apply:
  - (1) After a motion is made and seconded, the presiding officer shall read the motion and open the question to discussion and debate by the trustees. When ready to put the motion to a vote, the presiding officer shall call for the public employer and employee-beneficiary trustee votes to determine whether there are three votes from each trustee group in favor of the motion. If so, the motion shall be recorded as having been approved by one vote from the public employer trustees and one vote from the employee-beneficiary trustees.

- (2) For routine or procedural matters, the presiding officer may ask if there is any opposition to a motion after it has been made, and to the extent required, seconded and debated. If no opposition is voiced, the motion shall be recorded as having been unanimously approved by one vote by the public employer trustees and one vote from the employee-beneficiary trustees.
- (3) If the voting is not unanimous by each side, the names of the trustees who voted in favor of the motion, voted against the motion, or abstained from voting shall be recorded in the minutes.
- (4) In the event of a deadlock in a vote of the board on the same question or resolution at two successive meetings of the board, the board shall vote on whether or not to engage in dispute resolution. If six trustees of the board vote to engage in dispute resolution, the two trustee groups shall enter into mediation to attempt to resolve the question or resolution upon which the board has deadlocked.

The mediation shall be handled by a mediator appointed by the Federal Mediation and Conciliation Service. If the Federal Mediation and Conciliation Service fails or refuses to appoint a mediator within ten days of the date on which the six trustees voted to engage in dispute resolution, the mediation shall be handled by a mediator mutually agreeable to the two trustee groups. If the two trustee groups do not agree on a mediator within twenty days of the date on which the six trustees voted to engage in dispute resolution, either trustee group may petition the Administrative Judge of the First Circuit, Circuit Courts of the State of Hawaii, to appoint a mediator. Upon the appointment of a mediator, the two trustee groups shall in good faith enter into mediation on the question or resolution upon which the board has deadlocked. Nothing in this rule is meant to preclude the board from voting to engage in other forms of alternate dispute resolution to resolve a question or resolution upon which it has deadlocked.

- (5) Whenever any statute or other law requires a vote of a majority, two-thirds or other percentage or fraction of the trustees or members to which the board is entitled, the motion or other action shall be approved if it receives two votes in favor of the motion or



action as provided in subsection (d)(1), regardless of the total number of votes in favor of the motion or action.

For example, if a statute or other law requires a two-thirds vote of the members to which the board is entitled, the motion or other action will be approved if three trustees from each trustee group vote in favor of the motion or other action, even if the remaining four trustees vote against the motion or other action.

#### **1.08 Appearances Before the Board**

- (a) All persons shall comply with this rule when appearing before the board. Unless otherwise required by applicable federal or state law, the board shall have the discretion to prescribe additional standards and procedures for all appearances and proceedings before the board. The board may waive or suspend the provisions of this rule with respect to any particular appearance or proceeding before it.
- (b) Any person appearing before the board may appear in person, by an officer, partner or regular employee of the party, or be represented by an authorized representative. The board may at any time require any person transacting business with the board in a representative capacity to prove or authenticate the person's authority and qualification to act in such capacity.
- (c) The board shall afford all interested persons an opportunity to present oral testimony or submit data, views, or arguments, in writing, on any agenda item.
  - (1) Persons providing written testimony shall provide thirty copies of their testimony of which twenty copies shall be made available to the public. Twenty copies of materials provided to the board for or during a meeting that are determined to be disclosable shall be made available for distribution to the public.
  - (2) The board shall hear oral testimony on an agenda item after it has completed discussion of that item. At that time, the presiding officer shall invite members of the public to ask questions or provide comments on the agenda item prior to any action by the board. After the public has had an opportunity to provide input on

the agenda item, the board may discuss the agenda item further and act on the item or move on to the next agenda item.

- (3) A person may speak at a board meeting only when recognized to do so by the presiding officer. Comments are limited to three minutes per speaker. Time limitations may be adjusted at the discretion of the presiding officer or at the request of any three trustees. A person may not speak a second time on the same question unless authorized by the presiding officer to do so.
  - (4) The board may refuse to hear any testimony that is irrelevant, immaterial, or unduly repetitious and may from time to time impose additional conditions as are necessary or desirable for the orderly, efficient, and convenient presentation of oral testimony to the board. The board may request that the person providing oral testimony submit the testimony in writing to the board.
- (d) Nothing herein shall require the board to hear or receive any oral testimony or documentary evidence from a person on any matter which is the subject of another proceeding pending before the board.

#### **1.09 Delegation of Authority**

To the extent permitted by law, the board may delegate authority to act on its behalf in accordance with board policies and standards to a committee of the board, an administrator, a carrier, a third party administrator, or to such other persons and entities as it deems necessary or reasonable for the effective and efficient administration of the Fund and the provisions of Chapter 87A of the Hawaii Revised Statutes; provided, however, that nothing in this rule shall permit the board to delegate its power to adopt, amend or repeal any rules.

#### **1.10 State Ethics Code**

All trustees and employees of the Fund shall comply with Chapter 84 of the Hawaii Revised Statutes.

#### **1.11 Controlling Law**

To the extent that federal or state law governs any matter covered by these rules, the Fund and the board shall comply with and follow such federal or state law. To the extent that any matter is not completely governed by federal or state

law, the Fund and the board shall apply these rules to the extent reasonable and practicable.

#### **1.12 Authority of the Board to Waive Rule Provisions**

Subject to statutory requirements and limitations, the Board may waive an employee-beneficiary's compliance with any provision of the Fund's rules when the Board determines that: (a) good cause exists for such a waiver; (b) strict enforcement of such provision would impose a manifest injustice upon an employee-beneficiary who has substantially complied with the Fund's rules in good faith; and (c) such waiver does not involve any increase in the obligations or liabilities of the Fund beyond that which would have been involved if the employee-beneficiary had fully complied with the Fund's rules. Each waiver by the Board must be in writing and supported by documentation of the pertinent facts and grounds.

#### **1.13 Responsibilities of Employee-Beneficiaries and Public Employers; Enforcement Actions of the Fund**

- (a) Employee-beneficiaries are responsible for:
  - (1) Providing current and accurate personal information as per Rules 4.06 and 4.07;
  - (2) Paying the employee's premium contributions in the amount or amounts provided by statute, an applicable bargaining unit agreement, or by the applicable Fund benefit plan;
  - (3) Paying the employee's premium contributions at the times and in the manner designated by the board; and
  - (4) Complying with the Fund's rules.
- (b) Any public employer whose current or former employees participate in Fund benefit plans is responsible for:
  - (1) Providing information as requested by the Fund under section 87A-24(9) of the Hawaii Revised Statutes;
  - (2) Paying the employer's premium contributions in the amount or amounts provided by statute or an applicable bargaining unit

agreement and at the times and in the manner designated by the board;

- (3) Assisting the Fund in distributing information to and collecting information from the employee-beneficiaries; and
  - (4) Complying with the Fund's rules.
- (c) The Fund shall have the right and authority to file actions in any court, including but not limited to the courts of the State of Hawaii and the United States of America, to enforce the foregoing obligations and to collect premium contributions. Nothing in this rule is intended to limit or restrict the rights or remedies otherwise available to the Fund.

## **2.00 ADMINISTRATIVE PROCEDURES**

- 2.01 Adoption, Amendment or Repeal of Rules
- 2.02 Policies, Standards, and Procedures
- 2.03 Declaratory Rulings
- 2.04 Administrative Appeals
- 2.05 Emergency Appeals

### **2.01 Adoption, Amendment or Repeal of Rules**

- (a) The board may adopt, amend or repeal any rule of the Fund upon a motion of any trustee or upon the petition of an interested person or organization.
- (b) In the case of an interested person or organization, the petition shall be in writing and shall be submitted in duplicate to the board. The petition need not be in any particular form but shall contain:
  - (1) The petitioner's name, address, and telephone number;
  - (2) A statement of the nature of the petitioner's interest;
  - (3) A statement of the reasons for the proposed rule, amendment or repeal;
  - (4) A draft of the proposed rule, amendment or repeal; and
  - (5) The signature of the petitioner.

The board may reject any petition that does not contain the foregoing information.

- (c) The board shall determine whether to deny or proceed with a petition within ninety days. If the petition is denied, the board shall notify the interested person or organization in writing of the denial.
- (d) If the board decides to proceed with any proposed rule change, whether by a trustee or interested person or organization, it shall consult with public employers and affected employee organizations with regard to the proposed rule change as follows. First, it shall transmit the proposed rule change to the public employers, exclusive employee organizations, exclusive representatives, retiree organizations, and all other employee organizations registered with the board for consultation prior to adoption. Second, it shall provide the employers, representatives and organizations a

reasonable amount of time for review and comment on the proposed change prior to final action by the board.

- (e) After the consultation provided for in subsection (d), the proposed rule change shall be considered for adoption at an open meeting of the board that permits the attendance of interested persons.
- (f) All proposed rule changes shall be adopted by the board in accordance with the provisions of section 87A- 26 of the Hawaii Revised Statutes.
- (g) New rules, amendments or repeals of rules that are adopted by the board shall be submitted to the governor for approval and filed with the lieutenant governor's office.
- (h) Unless some other date is expressly selected by the board, a new rule, amendment of a rule, or repeal of a rule shall be effective the first day after the rule, amendment, or repeal is filed with the lieutenant governor's office.

## **2.02 Policies, Standards, and Procedures**

Policies, standards and procedures to be adopted amended or repealed may, at the discretion of the board, be transmitted to public employers and affected employee organizations for consultation purposes. Nothing herein shall require the board to consult with public employers or affected employee organizations concerning the board's adoption, amendment or repeal of policies, standards and procedures or to transmit any such policies, standards or procedures to public employers or affected employee organizations for consultation purposes.

## **2.03 Declaratory Rulings**

- (a) Any interested person may petition the board for a declaratory ruling as to the applicability of any statutory provision administered by the board or of any rule or order of the Fund.
- (b) Every petition shall be in writing and shall be submitted in duplicate to the board. The petition need not be in any particular form but shall contain the following:
  - (1) The petitioner's name, address, and telephone number;
  - (2) A designation of the specific statute, rule or order in question;

- (3) A statement of the nature of the petitioner's interest, including the reasons for the submittal of the petition;
- (4) A complete statement of the relevant and material facts;
- (5) A statement of the position or contentions of the petitioner; and
- (6) A full discussion of the reasons, including any legal authorities, in support of the petitioner's position or contention.

The board may reject any petition that does not contain the foregoing information.

- (c) Petitions to intervene and become a party to a declaratory ruling proceeding may be submitted in writing to the board. Such petitions shall contain the same information as required under subsection (b) and the grounds and reasons on which intervention is sought. The Board may deny intervention where the petition to intervene raises issues not reasonably pertinent to the issues already presented or the petition raises issues that would broaden the issues to be decided. If intervention is granted, the petitioner shall become a party to the proceeding to the degree permitted by the order granting intervention.
- (d) The board may dismiss any petition for a declaratory ruling for good cause. Without limiting the generality of good cause, the board may dismiss a petition if:
  - (1) The question raised is purely speculative or hypothetical;
  - (2) The petitioner's interest is not of the type or nature that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
  - (3) The issuance of a declaratory ruling may adversely affect the interests of the employer, the board, any of the trustees, the Fund, or any of the Fund's officers or employees in litigation which is pending or reasonably expected to arise in the future; or
  - (4) The matter is not within the jurisdiction of the board.
- (e) Subject to applicable federal and state law, the board at its discretion shall:
  - (1) Render a decision on the petition for a declaratory ruling without a hearing; or
  - (2) Hold a hearing and thereafter render its decision on the petition; or
  - (3) Refer the petition for consideration or hearing to the administrator, a special or standing committee of the board or any other person or

entity duly designated by the board. After considering the recommendation of the administrator, committee or designated person or entity, the board shall render its decision on the petition.

Where any question of law is involved, the board may seek the assistance of the state attorney general in reviewing the matter. The board may also seek the assistance of other government agencies when necessary or desirable.

Any petitioner who desires a hearing shall submit a written request for a hearing together with the petition for a declaratory ruling. The written request shall set forth in detail the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that the request for a hearing is dependent upon factual assertions, shall submit affidavits or certificates establishing those facts.

- (f) The petition for a declaratory ruling shall either be rejected in accordance with subsection (d) or acted upon by issuance of an order within ninety days. Upon the disposition of the petition, the board shall promptly notify the petitioner.
- (g) Orders disposing of petitions for a declaratory ruling will have the same status as other agency orders. An order shall be applicable only to the fact situation alleged in the petition or as set forth in the order. An order shall not be applicable to different fact situations or where additional facts exist that were not considered in the order.

## **2.04 Administrative Appeals**

- (a) A person aggrieved by one of the following decisions by the Fund may appeal to the board for relief from that decision:
  - (1) A determination that the person is not an employee-beneficiary, dependent-beneficiary or qualified beneficiary, or that the person is not eligible to enroll in or be covered by a benefit plan offered or sponsored by the Fund;



- (2) A determination that the person cannot make a change in enrollment, a change in coverage, or a change in plans;
  - (3) A cancellation or termination of the person's enrollment in or coverage by a benefit plan, including long term care, offered or sponsored by the Fund; or
  - (4) A refusal to reinstate the person's enrollment in or coverage by a benefit plan, including long term care, offered or sponsored by the Fund.
- (b) The first step in the appeal process is an appeal to the administrator. In order to appeal to the administrator for relief, an aggrieved person must file a written appeal in the Fund's office within thirty days of the date of the decision with respect to which relief is requested. The written appeal shall be filed in duplicate. Unless otherwise provided by applicable federal or state law, neither the administrator nor the board shall be required to hear any appeal that is filed after the thirty-day period has expired. The written appeal need not be in any particular form but should contain the following information:
  - (1) The aggrieved person's name, address, and telephone number;
  - (2) A description of the decision with respect to which relief is requested, including the date of the decision;
  - (3) A statement of the relevant and material facts; and
  - (4) A statement as to why the aggrieved person is appealing the decision, including the reasons that support the aggrieved person's position or contentions.
- (c) If the aggrieved person is dissatisfied with the administrator's action or if no action is taken by the administrator on the aggrieved person's written appeal within ninety days of its being filed in the Fund's office, the second step in the appeal process is for the aggrieved person to file a written appeal to the board. A written appeal to the board must be filed in duplicate in the Fund's office. The written appeal need not be in any particular form but shall contain the following information:
  - (1) The aggrieved person's name, address and telephone number;
  - (2) A statement of the nature of the aggrieved person's interest, e.g., employee-beneficiary or dependent-beneficiary;

- (3) A description of the decision with respect to which relief is requested, including, the date of the decision;
- (4) A complete statement of the relevant and material facts;
- (5) A statement of why the aggrieved person is appealing the decision, including a complete statement of the position or contentions of the aggrieved party; and
- (6) A full discussion of the reasons, including any legal authorities, in support of the aggrieved party's position or contentions.

Subject to applicable federal and state law, the board may reject any appeal that does not contain the foregoing information.

- (d) The board at any time may request the aggrieved person or any other party to the proceeding to submit a statement of additional facts or a memorandum, the purpose of which is to clarify the party's position or a specific factual or legal issue.
- (e) The board shall grant or deny the appeal within a reasonable amount of time. The board shall not be required to hold a hearing on any appeal unless otherwise required by applicable federal or state law. If required to hold a hearing, or if it decides to voluntarily hold a hearing on an appeal, subject to applicable federal or state law, the board may set such hearing before the board, a special, or standing committee of the board, a hearings officer, or any other person or entity authorized by the board to hear the matter in question. Nothing in these rules shall require the board to hear or decide any matter that can be lawfully delegated to another person or entity for a hearing and decision.
- (f) At any time, an aggrieved person may voluntarily waive his or her rights to the administrative appeal provided by the Rule by submitting such a waiver in writing to the Fund's office. The board may require the aggrieved person to make such a waiver by signing a form prescribed by it.

## **2.05 Emergency Appeals**

- (a) An employee-beneficiary ("appellant") who is aggrieved by a plan administrator's decision denying or limiting benefits provided under a plan offered by the Fund to the employee-beneficiary or a dependent-beneficiary enrolled by the employee beneficiary may make an emergency

appeal directly to the Board where a delay in following the Fund's normal appeal process could:

- (1) Seriously jeopardize the life or health of the employee-beneficiary or dependent-beneficiary;
  - (2) Seriously jeopardize the employee-beneficiary's or dependent-beneficiary's ability to regain maximum functioning; or
  - (3) In the opinion of a physician with knowledge of the medical condition of the employee-beneficiary or dependent-beneficiary, subject the employee-beneficiary or dependent-beneficiary to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal.
- (b) Any appellant desiring to make an emergency appeal under this Rule shall file a written request with the Fund administrator that contains the following information:
- (1) The name, address, and telephone number of the appellant;
  - (2) A description of the decision with respect to which relief is requested;
  - (3) A statement of the relevant and material facts;
  - (4) A statement as to why the appellant is appealing the decision, including all arguments and reasons that support the appellant's position or contentions;
  - (5) A statement as to why the appellant's appeal qualifies as an emergency appeal, i.e., why the appeal meets one or more of the conditions stated in subsection (a) above;
  - (6) A statement as to exactly what relief the appellant is seeking;
  - (7) Any documents and records that support the appellant's appeal, including, but not limited to, any opinions from physicians that show that the appeal should be handled as an emergency appeal; and
  - (8) If the appellant is going to be represented by a third person on the appeal: (i) a signed authorization by the appellant designating the third person to represent him or her on the appeal; or (ii) other documentation establishing the right of the third person to represent the appellant. Such documentation may include letters of guardianship, a power of attorney, or any other document establishing that the third person may represent the appellant. Appropriate representatives may include, but are not limited to, the parent, child, spouse or domestic partner of the appellant.

Notwithstanding the foregoing, the Fund administrator may waive the foregoing requirements if the Fund administrator finds that the criteria for making an emergency appeal are present and circumstances prevent the appellant from filing a written request for an appeal.

- (c) Within two business days of receipt of a request for emergency appeal, the Fund administrator shall determine whether the request for emergency appeal qualifies as an emergency appeal under the criteria stated in this Rule. If the Fund administrator determines that the request for emergency appeal does not qualify as an emergency appeal, the appellant's appeal shall be handled as a normal appeal. Appellant may appeal the Fund administrator's denial of a request for emergency appeal by filing a written request with the Fund Administrator. No particular form is required for such a written request so long as it can be understood that the appellant is seeking to appeal the Fund administrator's decision to the Board.
- (d) Upon determining that an appeal qualifies as an emergency appeal or upon receipt of an appeal of the Fund administrator's denial of a request for emergency appeal, the Fund administrator shall take the following actions:
  - (1) Set a time and date of a hearing when a quorum of the Board can be present. Subject to quorum requirements, the hearing shall be set within five business days of: (i) the date of the Fund administrator's determination that the appeal qualifies as an emergency appeal, or (ii) the date of receipt of an appeal of the Fund administrator's denial of a request for emergency appeal;
  - (2) Notify the appellant and his or her representative, if any, of the time and date of the hearing;
  - (3) Notify the plan administrator of the time and date of the hearing, provide the plan administrator with a copy of the written request for an emergency appeal filed by the appellant, and invite the plan administrator to submit a written statement of the plan administrator's position regarding the emergency appeal. If the plan administrator submits such a written statement, a copy shall be provided by the Fund administrator to the appellant;
  - (4) In the notices to the appellant and plan administrator, the Fund administrator shall request the parties to provide the Fund administrator with copies of any documents, records, written

testimony, or other written evidence that they wish the Board to consider at the hearing. To facilitate the hearing, the Fund administrator may request that the parties stipulate to the admission of all or any of such documents, records, written testimony, or other written evidence; and

- (5) Prior to the hearing, the Fund administrator shall provide each member of the Board that will attend the hearing with copies of the written request for an emergency appeal and any written statement of position by the plan administrator.
- (e) Unless the appellant expressly requests a public hearing, any hearing under this Rule shall be closed to the public. At the hearing, the following procedures shall apply:
- (1) The hearing shall be chaired by the EUTF chair, vice-chair, or secretary-treasurer. If none of these officers is present, the Board shall elect one of their members to chair the hearing;
  - (2) The chair shall be in charge of regulating the course and conduct of the hearing;
  - (3) The chair shall make all rulings on the admission, exclusion, or limitation of testimony and evidence. The admissibility of testimony and evidence shall not be governed by the laws of evidence. All relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The chair shall give effect to the privileges recognized by law;
  - (4) At the outset of the hearing, the chair shall provide a brief overview of the procedures that will apply to the hearing. Following this, the Fund administrator or other representative of the Fund staff shall state the nature and background of the proceeding, including the name of the appellant, the decision being appealed, and the relief being requested;
  - (5) After the presentation by the Fund administrator or staff, the appellant shall present his or her testimony, evidence, and arguments in support of the appeal. Following the appellant, the plan administrator shall present its testimony, evidence, and argument, if any, in support of the decision being appealed. At any time during the hearing, the Board may ask questions to the appellant, plan administrator, Fund staff, and any witnesses who

testify at the hearing. At the conclusion of the hearing, both the appellant and plan administrator may present final arguments in support of their positions;

- (6) At any time during the hearing, the Board may enter executive session to consult counsel regarding any legal issues involved in the appeal; and
  - (7) Prior to the conclusion of the hearing, the Board shall announce its decision on the appeal to the appellant and plan administrator. The Board shall subsequently issue the Board's decision in writing. A certified copy of the written decision shall be sent by certified mail, return receipt requested, to the appellant and plan administrator within a reasonable time after the hearing.
- (f) The Fund administrator may designate one or more EUTF staff members to perform any or all of the Fund administrator's duties under this Rule when the Fund administrator is unavailable or otherwise unable to perform such duties.

### **3.00 ELIGIBILITY FOR ENROLLMENT**

- 3.01 Health Benefits
- 3.02 Long-Term Care
- 3.03 Group Life Insurance

#### **3.01 Health Benefits**

- (a) Employee-beneficiaries. The following persons shall be eligible to enroll as employee-beneficiaries in the benefit plans offered or sponsored by the Fund:

- (1) An employee;
- (2) A retired employee;
- (3) The surviving spouse or domestic partner of an employee who is killed in the performance of the employee's duty, provided the surviving spouse or domestic partner does not remarry or enter into a domestic partnership;
- (4) The unmarried child of an employee who is killed in the performance of the employee's duty, provided the child is under the age of nineteen and does not have a surviving parent who is eligible to be an employee-beneficiary;
- (5) The surviving spouse or domestic partner of a deceased retired employee, provided the surviving spouse or domestic partner does not remarry or enter into a domestic partnership; and
- (6) The unmarried child of a deceased retired employee, provided the child is under the age of nineteen and does not have a surviving parent who is eligible to be an employee-beneficiary.

With respect to subsections (3) and (5), a surviving spouse or domestic partner ceases to be an eligible employee-beneficiary once the spouse or domestic partner remarries or enters into a domestic partnership even though the spouse or domestic partner may subsequently become single again as a result of an annulment, divorce, legal separation, dissolution of domestic partnership, or death. A surviving domestic partner shall not cease to be eligible under subsections (3) or (5) because the death of the employee or retired employee prevents him or her from further meeting the requirements of parts (1), (2), (3), (6), and (8) of the definition of "domestic partner" in Rule 1.02. With respect to subsections (4) and (6),

an unmarried child ceases to be eligible as of midnight of the child's nineteenth birthday.

Notwithstanding any other provision in these rules to the contrary, an employee-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan shall not be eligible for coverage under any benefit plan offered or sponsored by the Fund until the employee-beneficiary enrolls in the Medicare Part B medical insurance plan.

- (b) Dependent-beneficiaries. The following persons shall be eligible for coverage as dependent-beneficiaries in the benefit plans offered or sponsored by the Fund:

- (1) An employee-beneficiary's spouse or domestic partner;
- (2) An employee-beneficiary's or domestic partner's unmarried child, provided the child is either under the age of nineteen or a full-time student and under the age of twenty-four;
- (3) An employee-beneficiary's or domestic partner's unmarried child, regardless of age, who is incapable of self-support because of a mental or physical incapacity that existed prior to the child reaching the age of nineteen; and
- (4) A child for whom an employee-beneficiary must provide health benefit coverage under the terms of a qualified medical child support order.

With respect to subsection (2), an unmarried child ceases to be eligible as of midnight of the child's nineteenth or twenty-fourth birthday, as applicable. With respect to subsections (2) and (3), the child of a domestic partner ceases to be eligible upon the dissolution of the domestic partnership. In addition, as a condition of eligibility for any child over the age of nineteen, the employee-beneficiary shall provide the Fund with written proof reasonably satisfactory to the Fund of the full-time student status of such child. Such written proof shall be provided at such times and in such form as the Fund may from time to time direct.

Notwithstanding any other provisions in these rules to the contrary, a dependent-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan shall not be eligible for coverage under any retiree benefit plan offered or sponsored by the Fund until the dependent-beneficiary has enrolled in the Medicare Part B medical insurance plan.



### **3.02 Long-Term Care**

The following persons shall be eligible for any long-term care benefit plans offered or sponsored by the Fund, provided that they comply with the age, enrollment, medical underwriting and contribution requirements of such plans:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;
- (2) Employee-beneficiaries' in-law parents and grandparents; and
- (3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five.

### **3.03 Group Life Insurance**

Employees and retired employees are eligible for any group life insurance plans offered or sponsored by the Fund, provided that they comply with the age, enrollment, underwriting, and contribution requirements of such plans.

## **4.00 ENROLLMENT PROCEDURES**

- 4.01 Application for Enrollment
- 4.02 Rejection of an Enrollment Application
- 4.03 Dual or Multiple Enrollment
- 4.04 Date of Filing
- 4.05 Failure to File Properly Completed Enrollment Application Within the Prescribed Time; Effect on Coverage Dates
- 4.06 Notification of Changes in Personal Information
- 4.07 Verification of Eligibility
- 4.08 Exceptions to the Timely Filing of an Enrollment Application
- 4.09 Open and Special Enrollment Periods
- 4.10 Continuation of Coverage
- 4.11 Contribution Shortage
- 4.12 Cancellation of Enrollment; Effective Dates of Cancellation
- 4.13 Termination of Enrollment; Effective Dates of Termination
- 4.14 Reinstatement of Enrollment

### **4.01 Application for Enrollment**

- (a) An employee-beneficiary shall file an enrollment application, in the form prescribed by the board or by the board's policy, to enroll, change or cancel an enrollment in any benefit plan, including long term care, offered or sponsored by the Fund. Unless otherwise provided by the board or by the board's policy, all enrollment applications shall be filed by the employee-beneficiary with: (1) in the case of an employee, the employee's employer; and (2) in all other cases, the Fund. Notwithstanding the foregoing, upon retirement, an employee-beneficiary shall file an enrollment application to enroll or change enrollment in the benefit plans offered or sponsored by the Fund with the entity that pays his or her retirement or pension allowance. Thereafter, the retired employee-beneficiary shall file any and all enrollment applications directly with the Fund.
- (b) With due consideration of appropriate federal or state laws, the board shall set the standards and procedures for filing such enrollment applications, including, but not limited to, the form of such enrollment applications, the information required to be provided by the employee-beneficiary on such enrollment applications, and the method for filing such enrollment

applications. Enrollment applications shall include the employee-beneficiary's authorization to the state comptroller or the appropriate county director of finance to assign sufficient compensation to the Fund in payment of all contributions due from such employee-beneficiary for enrollment or coverage in any and all Fund benefit plans.

- (c) A representative of an employee-beneficiary may file an enrollment application for the employee-beneficiary if:
  - (1) The representative has a written authorization signed by the employee-beneficiary that authorizes the representative to file such enrollment applications; or
  - (2) A valid court order authorizes the representative to file such enrollment applications.

#### **4.02 Rejection of an Enrollment Application**

- (a) Any enrollment application may be rejected if it is incomplete or does not contain all information required to be provided by the employee-beneficiary.
- (b) An enrollment application shall be rejected if:
  - (1) The application seeks to enroll a person who is not eligible to enroll in the benefit plan for which enrollment is requested;
  - (2) The application is not filed within the time limitations prescribed by these rules;
  - (3) The application contains an intentional misstatement or misrepresentation of a material fact or contains other information of a fraudulent nature;
  - (4) The employee-beneficiary owes past due contributions or other amounts to the Fund; or
  - (5) Acceptance of the application would violate applicable federal or state law or any other provision of these rules.
- (c) Notification shall be provided to the employee-beneficiary of the rejection of any enrollment application.

#### **4.03 Dual or Multiple Enrollment**

- (a) No person may be enrolled simultaneously in any benefit plan offered or sponsored by the Fund as both an employee-beneficiary and a dependent-beneficiary, nor may unmarried children be enrolled by more than one employee-beneficiary. The Fund shall cancel such dual coverage enrollments.
- (b) Where an employee-beneficiary files more than one enrollment application, the enrollment application bearing the latest filing date shall be the one used by the Fund to process the employee-beneficiary's enrollment, provided the employee-beneficiary is eligible for such enrollment.

#### **4.04 Date of Filing**

An employee-beneficiary's enrollment application, beneficiary designation, or any other form required to be filed with the Fund shall be deemed to have been filed with the Fund on the date that the following entities, as applicable, actually receive such forms: (1) the employee-beneficiary's employer; (2) the entity that pays the employee-beneficiary's retirement or pension allowance; or (3) the Fund. However, if filed before the time or times prescribed in these rules, an enrollment application, beneficiary designation, or other form shall be deemed to have been filed on the date that the person would have been first eligible to file that document.

#### **4.05 Failure to File Properly Completed Enrollment Application Within the Prescribed Time; Effect on Coverage Dates**

Except as otherwise provided in these rules or by applicable federal or state law, the following shall apply to all applications to enroll in the benefit plans offered or sponsored by the Fund, to add or delete dependent-beneficiaries, or to change enrollments or coverages:

- (a) No enrollment of an employee-beneficiary, addition or deletion of a dependent-beneficiary, or change in an enrollment or coverage shall be effective without the filing of a properly completed enrollment application.
- (b) The effective dates of coverage, deletions of coverage, and changes in coverage shall be dependent on the filing of a properly completed

enrollment application within thirty days of the specified event that allows the filing of the application.

- (c) An employee-beneficiary who fails to file an enrollment application within the time prescribed by subsection (b) or any otherwise applicable rule shall not be permitted to file that application until the next open or special enrollment period.

#### **4.06 Notification of Changes in Personal Information**

Each employee-beneficiary shall immediately notify the Fund in writing of any changes in the employee-beneficiary's name or address or marital or domestic partnership status, of the birth or adoption of a child or any other changes in the family status of the employee-beneficiary, and any other material changes in the information previously filed by the employee-beneficiary as part of an enrollment application. Each notice to the Fund shall be submitted through the employee-beneficiary's employer or, if none, shall be submitted directly to the Fund.

#### **4.07 Verification of Eligibility**

The board may require periodic verification of eligibility for employee-beneficiaries and dependent-beneficiaries enrolled by an employee-beneficiary in Fund benefit plans. The board may set standards and procedures for the required verification. If verification is not provided in accordance with the standards and procedures established by the board, the dependent-beneficiary's enrollment shall be cancelled as set forth in Rule 4.12(d).

#### **4.08 Exceptions to the Timely Filing of an Enrollment Application**

- (a) Rule 4.05 and the times for filing enrollment applications prescribed in these rules shall not apply to the following persons:
  - (1) Retired members who are currently enrolled in a benefit plan offered or sponsored by the Fund;
  - (2) The surviving spouse, domestic partner, or any unmarried child under the age of nineteen of a deceased retired member who is eligible as an employee-beneficiary under Rule 3.01(a); and

- (3) The surviving spouse, domestic partner, or any unmarried child under the age of nineteen of any employee who is killed in the performance of duty who is eligible as an employee-beneficiary under Rule 3.01(a).
- (b) Coverage for the persons covered by subsection (a) shall become effective on the later of:
  - (1) The date of the event that makes the person eligible for enrollment when a properly completed enrollment application is filed within thirty days of the event; or
  - (2) The first day of the month following the date the person files a properly completed enrollment application.
- (c) Nothing in this rule shall permit an employee-beneficiary or dependent-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan to be covered under any benefit plan offered or sponsored by the Fund until enrolled in the Medicare Part B medical insurance plan. Further, nothing in this rule is meant to permit the enrollment of any person who is not otherwise eligible for enrollment in the benefit plan offered or sponsored by the Fund.

#### **4.09 Open and Special Enrollment Periods**

Except as otherwise provided by these rules, an employee-beneficiary may file an enrollment application during an open or special enrollment period to make any one or a combination of specific enrollment changes that have been approved by the board for that open or special enrollment period. The changes that the board may approve include, but are not limited to, changes from non-enrolled to enrolled status, changes between plans, changes in levels of coverage, and cancellations. All changes made shall become effective on the date approved by the board for the open or special enrollment period.

#### **4.10 Continuation of Coverage**

Subject to applicable federal and state law, coverage under the benefit plans offered or sponsored by the Fund shall continue:

- (a) Provided the employee-beneficiary meets the eligibility provisions of Rule 3.01 and pays the employee's premium contribution as provided by

statute, the employer's administrative rules, or an applicable bargaining unit agreement;

- (b) While the employee-beneficiary participates in an employee strike authorized by chapter 89, Hawaii Revised Statutes, provided that nothing in this rule shall limit the right or ability of the Fund to collect premium contributions from any public employer or employee-beneficiaries or the remedies available to the Fund to collect such premium contributions.
- (c) When an employee terminates employment and is rehired by a public employer within the same pay period or the next consecutive pay period, the employee shall be considered as having transferred employment. The employee shall be treated as if continuously enrolled in the Fund benefit plans in which the employee was enrolled at the time of termination and shall be required to pay the full cost of coverage to the extent that such is not paid by the employee's public employer. The employee shall not be allowed to change between plans unless the employee's current Fund benefit plan is unavailable at the employee's new employment location.

#### **4.11 Contribution Shortages**

A notice of contribution shortage shall be sent to an employee-beneficiary at his or her last known address if any portion of the employee-beneficiary's required semi-monthly contributions is not paid or is not withheld from the employee-beneficiary's earnings and transmitted to the Fund. The notice shall be sent within thirty days of the date on which the required semi-monthly contribution payment was due. Cancellation of the employee-beneficiary's enrollment due to any contribution shortage shall be as per Rule 4.12(c), and reinstatement of the employee-beneficiary's enrollment after any such cancellation shall be as per Rule 4.14(b).

#### **4.12 Cancellation of Enrollment; Effective Dates of Cancellation**

- (a) Voluntary Cancellation Requested by the Employee-Beneficiary. An employee-beneficiary may voluntarily cancel enrollment in a Fund benefit plan at any time by filing an enrollment application requesting cancellation with the employee-beneficiary's employer or, if none, directly with the Fund. The effective date of cancellation shall be the first day of the pay period following the requested cancellation date or, if no date is specified, the effective date of cancellation shall be the first day of the pay

period after which the Fund receives the employee-beneficiary's request for cancellation.

- (b) Cancellation Due to Ineligibility. The enrollment of any ineligible person who was enrolled in error or is ineligible to enroll in or be covered in a benefit plan offered or sponsored by the Fund shall be canceled:
  - (1) When the person is notified of the error or ineligibility prior to the effective date of the enrollment, the person shall be treated as if the enrollment application was not submitted.
  - (2) When the person is notified after the effective date of the enrollment, the enrollment shall be canceled on the first day of the second pay period that follows the date of the Fund's notice of cancellation to the ineligible person or employee-beneficiary.
- (c) Cancellation Due to Failure to Pay Contribution Shortage. If any portion of an employee-beneficiary's required semi-monthly or monthly contributions is not paid or is not withheld from the employee-beneficiary's earnings and transmitted to the Fund within 30 days of the date of the notice of contribution shortage, the employee-beneficiary's enrollment and all coverages for dependent-beneficiaries under that enrollment shall be cancelled as of the first day following the last period for which full payment of the employee-beneficiary's required semi-monthly or monthly contributions were paid and transmitted to the Fund. However, the enrollment of the employee-beneficiary and his or her dependent-beneficiaries may be reinstated as provided in Rule 4.14(b). Cancellation of an employee-beneficiary's enrollment pursuant to this rule shall not affect the Fund's right to collect any and all contribution shortages from the employee-beneficiary.
- (d) Cancellation Due to Failure to Comply with Rules. If an employee-beneficiary materially fails to comply with any of the Fund's rules, the employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment may be canceled after notice of such has been provided to the employee-beneficiary. The board may set standards and procedures for providing notice to employee-beneficiaries under this rule. The notice shall at a minimum specify how the employee-beneficiary has failed to comply with the Fund's rules, and a date by which the employee-beneficiary must comply with the Fund's rules in order to avoid



cancellation. The effective date of the cancellation shall be the date set forth in the notice as to when the employee-beneficiary must comply with the Fund's rules in order to avoid cancellation.

#### **4.13 Termination of Enrollment; Effective Dates of Termination**

- (a) Termination Due to Change in Employment Status. An employee-beneficiary's enrollment in all benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be terminated upon the employee-beneficiary's loss of eligibility to participate in such plans due to a change in employment status. The effective date of the termination shall be the first day of the pay period following the effective date of the change in employment status.
- (b) Termination Due to Filing of Fraudulent Claims. An employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment may be terminated if the employee-beneficiary files fraudulent claims for benefit. A dependent-beneficiary's coverage in all of the benefit plans offered or sponsored by the Fund may be terminated if the dependent-beneficiary files fraudulent claims for coverage and/or benefits. The effective date of the termination shall be the date that the Fund determines that the employee-beneficiary or dependent-beneficiary, as applicable, has filed fraudulent claims.
- (c) Notice to the Fund; Recovery of Benefits. If an event occurs that makes a person ineligible for continued enrollment or coverage in the benefit plans offered or sponsored by the Fund, that person or employee-beneficiary shall notify the Fund of the event as soon as reasonably practicable. All such notices shall be in writing and shall be sent to the Fund. The Fund shall be entitled to seek recovery of any benefits that were provided to any person after an event that terminated the person's enrollment or that otherwise made that person ineligible for continued enrollment in or coverage by the benefit plans offered or sponsored by the Fund. In seeking to recover benefits under this rule, the Fund shall have the rights of offset and set-off, including without limitation, the right to recover amounts from and out of any and all future benefits payable to the person whose enrollment was terminated or who otherwise ceased to be eligible for continued enrollment or coverage in the Fund's benefit plans.

#### **4.14 Reinstatement of Enrollment**

- (a) General Rule. Unless another rule of the Fund expressly applies, an employee-beneficiary whose enrollment in any of the Fund's benefit plans has been cancelled or terminated may not apply for reinstatement in those benefit plans. The employee-beneficiary may only apply for a new enrollment during the Fund's next open enrollment period. Any such new enrollment may be conditioned upon the employee-beneficiary meeting all the Fund's rules for eligibility and enrollment, curing any past deficiencies or failures that led to the employee-beneficiary's cancellation or termination, and providing adequate assurance that the employee-beneficiary will not further engage in the conduct that previously led to the employee-beneficiary's cancellation or termination. Nothing in this Rule shall be deemed to require the Fund to re-enroll any employee-beneficiary whose enrollment has been previously cancelled or terminated.
  
- (b) Contribution Shortage Cancellation. If an employee-beneficiary's enrollment in the Fund's benefit plan or plans has been cancelled under Rule 4.12 (c), the employee-beneficiary's enrollment in such benefit plan or plans may be reinstated if the employee-beneficiary makes full payment of all contributions due from the employee-beneficiary by the date specified in the contribution shortage notice provided for in Rule 4.11. The reinstatement shall be made so that the employee-beneficiary and his or her dependent-beneficiaries shall suffer no break in coverage. However, if the employee-beneficiary fails to pay all contribution shortages by the date specified in the contribution shortage notice provided for in Rule 4.11, the employee-beneficiary will suffer a break in coverage and may only apply for a new enrollment at the next open enrollment as per Rule 4.14 (a).

## **5.00 HEALTH AND OTHER BENEFIT PLANS**

- 5.01 Enrollment; Effective Dates of Coverage
- 5.02 Changes in Enrollment; Effective Dates of Coverage
- 5.03 Mandatory Change to Medicare Supplemental Plan for Retired Employees
- 5.04 Cancellation Due to Failure to Enroll in Medicare; Effective Date of Cancellation
- 5.05 Termination of Enrollment; Effective Dates of Termination
- 5.06 Reinstatement of Enrollment; Effective Dates of Reinstatement

### **5.01 Enrollment; Effective Dates of Coverage**

- (a) New Employee. An employee-beneficiary may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when the employee-beneficiary is first hired as an employee. The effective date of coverage shall be the date the employee beneficiary is first hired.
- (b) Newly Eligible Employee. An employee-beneficiary, other than a retired member, may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when the employee-beneficiary first becomes an employee due to a change in employment status. The effective date of coverage shall be the date the change in employment status occurs.
- (c) Loss of Coverage in a Benefit Plan Offered by the Fund. An employee-beneficiary may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for dependent-beneficiaries when the employee-beneficiary loses coverage under the benefit plans offered or sponsored by the Fund because the employee-beneficiary's covering enrollment was terminated or the employee-beneficiary ceased to be eligible as a dependent-beneficiary. The effective date of coverage shall be the day of the employee-beneficiary's loss of coverage.
- (d) Loss of Coverage in a Non-Fund Health Benefit Plan. An employee-beneficiary who is eligible but not enrolled, may enroll in the health benefit plans offered or sponsored by the Fund, and obtain coverage for eligible dependent-beneficiaries, when the employee-beneficiary meets the

conditions required for a special enrollment under 26 U.S.C. §9801(f) and the federal regulations enacted under or pursuant to that statute. These conditions are:

- (1) At the time that coverage under the Fund's health benefit plans were offered to the employee-beneficiary, the employee-beneficiary was covered by a Non-Fund health benefit plan or a COBRA continuation provision; and
- (2) The employee-beneficiary declined coverage under the Fund's health benefit plans because of the employee-beneficiary's coverage under the Non-Fund health benefit plan or a COBRA continuation provision; and
- (3) The employee-beneficiary's coverage under the Non-Fund health benefit plan was terminated as a result of loss of eligibility for that coverage (including as a result of legal separation, divorce, death, termination of employment or reduction of hours of employment) or because employer contributions towards such coverage was terminated; or
- (4) The employee-beneficiary's coverage under the COBRA continuation provision was exhausted.

The effective date of the coverage under Rule 5.01(d) shall be as follows: If a properly completed enrollment form is filed within thirty (30) days of the date that the employee-beneficiary loses coverage or the date that the employee-beneficiary's COBRA continuation coverage is exhausted, whichever event is applicable, the effective date of coverage will be the date of that event. If a properly completed enrollment form is filed more than thirty (30) days after the event, the effective date of coverage will be the first day of the pay period after the form is received.

- (e) Enrollment Due to Changes in Marital, Domestic Partnership or Family Status. An employee-beneficiary who has previously declined coverage in the health benefit plans offered or sponsored by the Fund may enroll in the Fund benefit plans when the employee-beneficiary gains a dependent through a change in marital, domestic partnership or family status, e.g., marriage, entry into domestic partnership, birth, adoption, or issuance of a qualified medical child support order. The effective date of enrollment shall be:

- (1) The date the Fund receives proper notification of the change in marital, domestic partnership or family status; or

- (2) The date of a child's birth, adoption, or placement for adoption.
- (f) Enrollment or Changes in Enrollment Upon Retirement. An employee-beneficiary may enroll or change coverages in the health benefit plans offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when that person begins to receive a retirement allowance from a state or county retirement system. The effective date of the coverage shall be the employee-beneficiary's date of retirement.
- (g) Surviving Spouse, Domestic Partner, or Child of a Deceased Retiree or an Employee Who was Killed in the Performance of Duty. A surviving spouse, domestic partner or unmarried child who is eligible as an employee-beneficiary under Rule 3.01(a) may enroll in the health benefit plans offered or sponsored by the Fund. The effective date of coverage shall be determined under Rule 4.08, the date of the event that permits enrollment being the date that the retiree deceases or the date that the employee is killed in the performance of duty, whichever is applicable.
- (h) The public employer's contribution and employee-beneficiary's contribution, if any, shall begin on the first day of the pay period immediately following the employee-beneficiary's effective date of coverage in the health benefit plans.

## **5.02 Changes in Enrollment; Effective Dates of Coverage**

- (a) Additions of Dependents Due to Changes in Marital, Domestic Partnership or Family Status. An employee-beneficiary may change his or her enrollment to add coverage for dependent-beneficiaries in the Fund health benefit plans in which the employee-beneficiary is currently enrolled upon the occurrence of any of the following events: marriage, entry into domestic partnership, birth of a child, adoption of a child, addition of a foster child, or the issuance of a qualified medical support order. The effective date of the change in enrollment shall be:
  - (1) The date that the Fund receives proper notification of the addition of the spouse, foster child, or other dependent-eligible; or
  - (2) In the case of the birth of a child, the date of the child's birth; or
  - (3) In the case of the adoption of a child at birth, the date of the child's birth, provided that the employee-beneficiary provides the Trust Fund with a written certification of intent to adopt the child (in form and content satisfactory to the Fund) and an enrollment

- application for the child prior to the child's birth or within thirty days thereafter; or
- (4) In the case of the adoption of a child after birth, the date of the adoption, provided that the employee-beneficiary provides the Fund with satisfactory documents evidencing the adoption and an enrollment application for the child within thirty days of the date of adoption; or
  - (5) In the case of a child placed for adoption, the date that the employee-beneficiary assumes custody of and an obligation to support the child in anticipation of adopting the child, provided that the employee-beneficiary provides the Fund with a written certification of intent to adopt the child (in form and content satisfactory to the Fund) and an enrollment application for the child within thirty days of the date that the employee-beneficiary assumes custody of and an obligation to support the child; or
  - (6) In the case of a qualified medical child support order, the date specified in the order, or if no date is specified, the date that the order is issued.

Notwithstanding Rule 5.02(a) (5), the effective date of coverage for a child placed for adoption may be any other date that is specified: in an applicable court order, by a government agency placing the child, or by a licensed child placing organization placing the child. Except as otherwise required by law or these rules, Rule 4.05 shall apply to changes of enrollment under this Rule.

- (b) Deletions of Dependents Due to Changes in Marital, Domestic Partner or Family Status. An employee-beneficiary shall change his or her enrollment to terminate coverage of dependent-beneficiaries who cease to be eligible for continued enrollment in the Fund health benefit plans upon the occurrence of any of the following events: divorce or dissolution; annulment; legal separation; dissolution or other act ending domestic partnership; death of a spouse, domestic partner or child; failure to complete the adoption of a child; the end of any required coverage of a child under a qualified medical support order; or a child ceases to be eligible for coverage as a dependent-beneficiary under Rule 3.01(b). The effective date of change in coverage shall be the first day of the first pay period following the occurrence of the event. Employee-beneficiaries and dependent-beneficiaries are required to provide the Fund with written notice of the occurrence of these events as soon as reasonably practicable pursuant to Rule 4.06 and Rule 4.13(c).

- (c) Loss of Spouse's or Domestic Partner's Coverage. An employee-beneficiary may change enrollment to add a spouse or domestic partner as a dependent-beneficiary in the Fund health benefit plans in which the employee-beneficiary is currently enrolled when the employee-beneficiary's spouse or domestic partner has lost coverage in any health benefit plan due to an employment termination or other loss of eligibility. The effective date of the change in enrollment shall be the date that the employee-beneficiary's spouse or domestic partner lost coverage in the spouse's or domestic partner's health benefit plan.
- (d) Last Child Becomes Ineligible. An employee-beneficiary may change his or her enrollment in the Fund health benefit plans in which the employee-beneficiary is currently enrolled when the last of the employee-beneficiary's children becomes ineligible for coverage as a dependent-beneficiary under the health benefit plans offered or sponsored by the Fund, e.g., when the child marries, becomes nineteen years of age and is not a full-time student, is between nineteen and twenty-four years of age and ceases to be a full-time student, or becomes twenty-four years of age. The effective date of the change in enrollment shall be the date on which the child lost eligibility.

Notwithstanding Rule 4.06, if the employee-beneficiary fails to give the appropriate notice to the Fund within thirty days of the event, the effective date of the change in coverage shall be the date on which notice was received by the Fund.

- (e) Changes Between Plans. An employee-beneficiary may change between health benefit plans offered or sponsored by the Fund when:
  - (1) The employee-beneficiary moves to a residence outside of the geographic areas covered by the employee-beneficiary's present benefit plan. The effective date of the change shall be the date of the employee-beneficiary's relocation.
  - (2) The employee-beneficiary is enrolled in a supplemental health benefits plan offered or sponsored by the Fund and loses primary coverage in a Non-Fund health benefits plan. The effective date of the change shall be the date that the employee-beneficiary loses coverage in the Non-Fund health benefits plan.

- (f) Any change in the public employer's contribution and the employee-beneficiary's contribution resulting from the change in enrollment or coverage shall be effective on the first day of the pay period immediately following the effective date of the employee-beneficiary's change in enrollment or coverage.

#### **5.03 Mandatory Enrollment in Medicare Part B for Retired Employees**

- (a) An employee-beneficiary or a dependent-beneficiary shall submit a Notice of Enrollment along with proof of enrollment in the federal Medicare Part B medical insurance plan when the employee-beneficiary or dependent-beneficiary becomes eligible to enroll in the federal Medicare Part B medical insurance plan. Notwithstanding Rule 4.05, the effective date of coverage shall be the later of the following:
  - (1) The date that the employee-beneficiary or dependent-beneficiary becomes eligible for Medicare provided that proof of enrollment in Medicare Part B is submitted; or
  - (2) The first day of the month in which the Fund receives the employee-beneficiary or dependent-beneficiary's enrollment application and proof of enrollment in Medicare Part B.
- (b) Each public employer shall pay to the Fund a contribution equal to \$50 per month, or such other amount as is determined by the board, for voluntary medical insurance coverage under Medicare for retired members of the employees' retirement system, county pension system, or a police, firefighters, or bandsmen pension of the State or a county as set forth in Chapter 88 of the Hawaii Revised Statutes. Out of such contributions, the Fund shall reimburse the premiums paid, exclusive of any and all Medicare penalties, by the following persons for Medicare Part B medical insurance coverage in the amount of \$50 per month or such other amount as is determined by the board:
  - (1) An employee-beneficiary who is a retired employee;
  - (2) The employee-beneficiary's spouse or domestic partner while the employee-beneficiary is living; and
  - (3) The employee-beneficiary's spouse or domestic partner after the death of the employee-beneficiary, if the spouse or domestic partner qualifies as an employee-beneficiary under Rule 3.01(a).



Payment of these reimbursements shall be made only for those persons who are enrolled in the Medicare Part B medical insurance plan and pay their Medicare Part B medical insurance premiums to the Social Security Administration.

**5.04 Cancellation Due to Failure to Enroll in Medicare; Effective Date of Cancellation**

- (a) If an employee-beneficiary becomes eligible to enroll and fails to enroll in the federal Medicare Part B medical insurance plan, the employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be cancelled.
- (b) If a dependent-beneficiary becomes eligible to enroll and fails to enroll in the federal Medicare Part B medical insurance plan, the dependent-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund shall be cancelled.
- (c) The effective date of any cancellation under this rule shall be the date upon which the employee-beneficiary or dependent-beneficiary, as applicable, first became eligible to enroll in the federal Medicare Part B medical insurance plan.

**5.05 Termination of Enrollment; Effective Dates of Termination**

- (a) Termination Due to Surviving Spouse's or Domestic Partner's Remarriage or Entry into Domestic Partnership. A surviving spouse's or domestic partner's enrollment in all benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be terminated upon the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership. The effective date of the termination shall be the first day of the pay period following the date of the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership. Notwithstanding the foregoing, the child of a deceased retiree that is eligible to be an employee-beneficiary under Rules 3.01(a)(4) or Rule 3.01(a)(6) may continue his or her coverages by filing an enrollment application under Rule 5.01(g). The effective date of coverage shall be as provided in Rule 4.08(b), the date of the event making the person eligible for enrollment being the date of termination of coverage due to the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership.

- (b) Termination Due to Child's Loss of Eligibility. A child's enrollment in all benefit plans offered or sponsored by the Fund shall be terminated upon the occurrence of any of the following events:

- (1) The child marries;
- (2) The child enters active military duty;
- (3) The child reaches the age of nineteen and is not a full-time student;
- (4) The child is between the ages of nineteen and twenty-four and ceases to be a full-time student;
- (5) The child, while still a full-time student, reaches the age of twenty-four; or
- (6) The employee-beneficiary fails to complete a legal adoption of the child within twelve months of the date that the child is covered by the Fund's benefit plans.

Notwithstanding Rule 5.05 (b) (6), the enrollment of a child placed for adoption shall not be terminated if the employee-beneficiary has custody of and an obligation to support the child under a court order or agreement with a government agency or licensed child placing organization.

With respect to subsections (1) and (2), the loss of eligibility as a dependent-beneficiary is permanent. Unless provided otherwise by these rules or applicable federal or state law, the effective date of the termination shall be the first day of the pay period following the date of the event or, in an event under Rule 5.05 (b) (6), the date stated in a written notice to the employee-beneficiary.

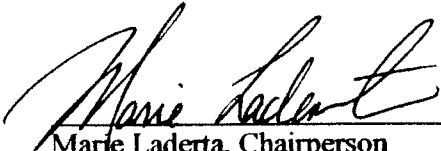
#### **5.06 Reinstatement of Enrollment; Effective Dates of Reinstatement**

- (a) Reinstatement in Employment. If as a result of an order or award from a court, arbitrator or other entity with proper jurisdiction over the matter, an employee-beneficiary is found to have been wrongfully terminated or suspended and is ordered to be reinstated in state or county employment, the employee-beneficiary shall be reinstated in the same Fund benefit plans from which the employee-beneficiary's coverage was terminated. The effective date of the reinstatement shall be the date of termination so that the employee-beneficiary's coverage is continuous, provided that the employee-beneficiary pays the full cost of such coverage less any contribution paid by the employer on behalf of the employee-beneficiary as provided by statute, the employer's administrative rules, or an

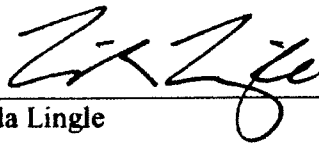
applicable bargaining unit agreement. If the full cost of such coverage is not paid, the reinstatement shall be effective upon the employee-beneficiary's return to active duty.

- (b) Return From an Authorized Leave of Absence. If an employee-beneficiary returns from an authorized leave of absence ("LOA") during which coverage was not provided by a Fund benefit plan, the employee-beneficiary may be reinstated in the same Fund benefit plans from which coverage was cancelled if the employee-beneficiary files a properly completed enrollment application. In accordance with Rule 4.05, the reinstatement shall be effective upon the employee-beneficiary's return from the LOA if the employee-beneficiary files the enrollment application within thirty days of his or her return from the LOA.
- (c) Return From a Leave of Absence Covered by the Family Medical Leave Act (FMLA) Or Uniform Services Employment and Reemployment Rights Act (USERRA). If an employee-beneficiary returns from a leave of absence covered under the FMLA or USERRA and the employee-beneficiary's enrollment in the Fund benefit plans was canceled during that leave of absence, the employee-beneficiary shall be reinstated in the same Fund benefit plans from which coverage was canceled. The reinstatement shall be effective upon the employee-beneficiary's return to work.
- (d) Enrollment in Medicare by a Retired Employee. If the enrollment of an employee-beneficiary or the coverage of a dependent-beneficiary was terminated due to the employee-beneficiary's or dependent-beneficiary's failure to enroll in the federal Medicare Part B medical insurance plan, upon the employee-beneficiary's or dependent-beneficiary's enrollment in such plan and submission of a proper and complete enrollment application to the Fund, the employee-beneficiary or dependent-beneficiary shall be enrolled in or covered by the Medicare supplemental plan offered by the Fund. The coverage shall be effective on the date specified in Rule 5.03.
- (e) The employer's contribution and the employee-beneficiary's contribution shall begin on the first day of the pay period immediately following the employee-beneficiary's effective date of coverage.

The Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees Administrative Rules were adopted during a regular meeting of the Board of Trustees on February 19, 2003, which were amended and approved on May 19, 2004, August 25, 2004, September 28, 2005, March 22, 2006, September 26, 2007, and August 20, 2008. The rules shall take effect on the first day after filing with the Lieutenant Governor's Office.


  
Marie Laderta, Chairperson  
Hawaii Employer-Union Health  
Benefits Trust Fund

APPROVED

  
Linda Lingle  
Governor  
State of Hawaii

Date Filed, Office of the Lieutenant  
Governor

APPROVED AS TO FORM:

  
Deputy Attorney General

'09 APR -9 PM 2:19

LIEUTENANT GOVERNOR'S  
OFFICE

## APPENDIX E

### Letter of Intent

#### LETTER OF INTENT IN SUBMITTING A PROPOSAL

Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

FAX Number – (808) 586-2320  
E-mail – [eutfadmin@hawaii.gov](mailto:eutfadmin@hawaii.gov)

Re: Request for Proposals No. 09-004: Proposals to Furnish Custodian Services

This is to acknowledge that we have examined the referenced Request for Proposals and are interested in submitting a proposal.

Submitted By:

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Fax Number: \_\_\_\_\_

## APPENDIX F

### Reference Information Questionnaire

STATE OF HAWAII  
CUSTODIAN SERVICES  
RFP No. 09-004  
REFERENCE INFORMATION QUESTIONNAIRE

Vendor's Name:

Dates Custodian Services were rendered by Vendor:

to

Reference (Client Organization) Name:

Estimated number of eligible employees served by your health benefits and/or pension programs:

Approximate amount of funds received annually by custodial account(s):

Individual Responding to This  
Request for Reference Information:  
Printed Name

---

Signature (MUST BE THE SAME AS THE SIGNATURE ACROSS THE ENVELOPE SEAL)

Individual's Title:

Individual's Telephone Number:

Date Reference Form Was Completed:

**NOTE:** Reference should complete responses to the seven items that appear on the following pages. If completed using a Word document, use as much space as required. If completed manually, record response in space provided.

1. Describe briefly the services provided by the vendor to your organization:

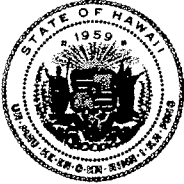
**Please respond to the remaining questions (#2-7) by rating the custodian services provided by the vendor.**

2. Please rate your overall satisfaction with the vendor on a scale of 1 to 5, with 1 being "least satisfied" and 5 being "most satisfied."
3. If you answered 3 or less to the previous question, what could the vendor have done to improve their rating?
4. Please indicate your level of satisfaction with the vendor's management structures, processes, and personnel? Use a scale of 1 to 5; with 1 being "least satisfied," and 5 being "most satisfied."
5. Rate your level of satisfaction with the vendor's line-level staff (e.g. operational staff). Use a scale of 1 to 5; with 1 being "least satisfied" and 5 being "most satisfied."
6. As far as you know, has the vendor remained (or did the vendor remain) in compliance with the contract throughout their provision of services to your organization? If not, please explain.
7. Would you use the services of the vendor again? Indicate on a scale of 1 to 5: with 1 being "absolutely not" and 5 being "absolutely yes."

## **APPENDIX G**

### **Contract and General Conditions**





**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_,  
*(Insert name of state department, agency, board or commission)*  
State of Hawaii ("STATE"), by its \_\_\_\_\_,  
*(Insert title of person signing for State)*  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),  
whose address is \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_  
*(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)*  
under the laws of the State of \_\_\_\_\_, whose business address and federal  
and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to \_\_\_\_\_, the STATE  
*(Legal authority to enter into this Contract)*  
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) \_\_\_\_\_  
*(Identify state sources)*

or (2) \_\_\_\_\_  
*(Identify federal sources)*

or both, in the following amounts: State \$ \_\_\_\_\_  
Federal \$ \_\_\_\_\_

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number \_\_\_\_\_ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

**STATE**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

**CONTRACTOR**

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

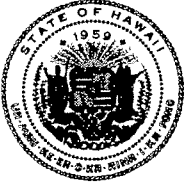
**CORPORATE SEAL**

(If available)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS.  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared  
\_\_\_\_\_ and \_\_\_\_\_, to me  
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are  
\_\_\_\_\_ and \_\_\_\_\_ of  
\_\_\_\_\_, the  
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said  
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said  
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_

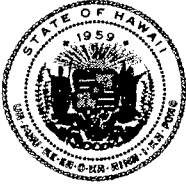
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Date

NOTARY CERTIFICATION



# STATE OF HAWAII

## CONTRACTOR'S

### STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

### CONTRACTOR

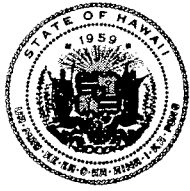
By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

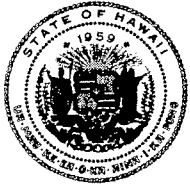
Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_

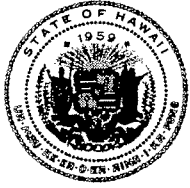


**STATE OF HAWAII**  
**SCOPE OF SERVICES**

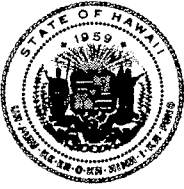


**STATE OF HAWAII**

**COMPENSATION AND PAYMENT SCHEDULE**



**STATE OF HAWAII**  
**TIME OF PERFORMANCE**



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE**

**1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

**2. By the Director of DHRD, State of Hawaii.**

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

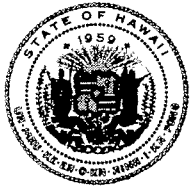
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)





**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of



supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.
34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or
  - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or



- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

## APPENDIX H

### Wage Certification

Subject: To furnish Custodian Services for the Hawaii Employer-Union Health Benefits Trust Fund

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment insurance, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, Hawaii Revised Statutes.

Applicant: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX I

### Offer Form OF-1

Offeror Name: \_\_\_\_\_

Location of Home Office: \_\_\_\_\_

Location of Honolulu Office (if any): \_\_\_\_\_

Primary Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

The undersigned proposes to provide custodian services for the Hawaii Employer-Union Health Benefit Trust Fund's ("EUTF") as set forth in this proposal, all in strict compliance with the specifications, terms, and conditions set forth in RFP No. 09-004, and any modifications, amendments, and addenda issued to that RFP.

The undersigned states that he or she has carefully read and understands the terms and conditions of the sample contract (including the General Conditions) and agrees that the EUTF reserves the right to cancel the RFP, or reject any or all proposals, or waive any defects when, in their opinion, such is in the best interest of the EUTF and State of Hawaii.

The undersigned certifies that this proposal is not in violation of Section 84-15, Hawaii Revised Statutes, concerning prohibited State contracts, and is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents: **(Check ☒ one only)**

☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**

☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ Corporation    ☐ Joint Venture  
☐ Other \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully Submitted:

\*Authorized Original Signature: \_\_\_\_\_

Name and Title (Please Type or Print): \_\_\_\_\_

\*\*Exact Legal Name of Company (Offeror): \_\_\_\_\_

Date: \_\_\_\_\_

\*Please attach to this page notarized evidence of the authority of this officer to submit a proposal on behalf of Offeror.

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

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This proposal includes the following evidence showing the individuals' authority to bind the offeror:

If the offeror is a corporation: **(Check ☒ those that apply)**

- ☐ A certified copy of a corporate resolution has been submitted showing the individual's authority to bind the corporation; **OR**
- ☐ A certified copy of the articles of incorporation or bylaws, or applicable sections thereof, have been submitted showing the individual's authority to bind the corporation.

If the offeror is a partnership or joint venture: **(Check ☒ those that apply)**

- ☐ Each member of the partnership or joint venture has signed the proposal letter; **OR**
- ☐ A partnership agreement or joint venture agreement, or applicable sections thereof, have been submitted showing that the individual(s) signing the proposal transmittal letter have the authority to bind the partnership or the joint venture.

If the offeror is a limited liability company (LLC) or other type of entity:

**(Check ☒ the item if it applies)**

A certified copy of the articles of organization, operating agreement, other official document, or applicable sections thereof, have been submitted showing that the individual(s) signing the proposal transmittal letter have the authority to bind the partnership or the joint venture.